No.

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS

v.

BADAR KHAN SURI

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Immigration and Nationality Act strips district courts of jurisdiction over any claims by an alien "arising from" "any action taken or proceeding brought to remove an alien from the United States," 8 U.S.C. 1252(b)(9), or "the decision or action" "to commence [such] proceedings," 8 U.S.C. 1252(g), and instead makes a "petition for review filed with an appropriate court of appeals" the "sole and exclusive means for judicial review" of such claims, 8 U.S.C. 1252(a)(5).

The question presented is whether, notwithstanding 8 U.S.C. 1252, an alien detained pending his removal proceedings may challenge that detention in a habeas petition based on claims that also go to the validity of his being removed.

PARTIES TO THE PROCEEDING

Petitioners (respondents-appellants below) are Donald J. Trump, President of the United States; Markwayne Mullin, Secretary of Homeland Security; Marco Rubio, Secretary of State; Todd Blanche, Attorney General of the United States; David J. Venturella, Acting Director, U.S. Immigration and Customs Enforcement (ICE); Robert Guadian, Washington Field Office Director, ICE; and Jeffrey Crawford, Warden of Farmville Detention Center.*

Respondent (petitioner-appellee below) is Badar Khan Suri.

RELATED PROCEEDINGS

United States District Court (E.D. Va.):

Suri v. *Trump*, No. 25-cv-480 (Mar. 20, 2025) (enjoining respondent's removal pending district court proceedings)

Suri v. *Trump*, No. 25-cv-480 (May 14, 2025) (granting motion for release on bond)

United States Court of Appeals (4th Cir.):

Suri v. *Trump*, No. 25-1560 (July 1, 2025) (denying stay pending appeal)

Suri v. *Trump*, No. 25-1560 (July 23, 2026) (affirming district court's release order and order enjoining removal)

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* Secretary Mullin, Attorney General Blanche, Director Venturella, and Director Guadian are automatically substituted for their predecessors. See Sup. Ct. R. 35.3.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes and regulations—Continued: Page

Miscellaneous:

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OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-88a) is reported at 184 F.4th 260. The orders of the district court (App., *infra*, 89a-92a) are available at 2025 WL 914757 and 2025 WL 1392143.

JURISDICTION

The judgment of the court of appeals was entered on July 23, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reprinted in the appendix to this petition. App., *infra*, 158a-164a.

INTRODUCTION

This case presents an important question of immigration law that has divided the circuits: Must aliens challenge the grounds for their removal solely through the petition-for-review process that Congress prescribed under Title 8 of the U.S. Code, or can aliens detained pending removal proceedings file habeas petitions that collaterally attack the bases for those removal proceedings?

The answer is clear: The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, channels all challenges that go to the validity of an alien's removal exclusively through the petition-for-review process in the courts of appeals, as the Third Circuit correctly held. *Khalil* v. *President*, 164 F.4th 259, 275-276 (2026) (per curiam). Aliens cannot end-run that channeling scheme by filing habeas petitions that collaterally attack the bases for their removal, simply by repackaging legal objections to their later removal as present defects with their current detention pending that removal. Instead, the INA strips district courts of jurisdiction over nearly all claims "arising from" removal proceedings—including "all questions of law and fact * * * arising from any action taken or proceeding brought to remove an alien from the United States," as well as those "arising from the decision or action by [the government] to commence [removal] proceedings." 8 U.S.C. 1252(b)(9) and (g). The "sole and exclusive means for judicial review" of such claims is a "petition for review filed with an appropriate court of appeals." 8 U.S.C. 1252(a)(5). That naturally includes claims raised by an alien that reduce to the assertion it is illegal to detain him for all of the same reasons that it is ultimately illegal to remove him.

Accordingly, "the INA bars [an alien] from attacking his detention and removal in a habeas petition" premised on claims that can be "review[ed] later on" in a petition for review. *Khalil*, 164 F.4th at 281. The entire point of the INA's channeling scheme is to ensure aliens "get just one bite at the apple—not zero or two." *Ibid.* If an alien can raise a claim immediately in habeas that he could also raise later in a PFR, then this design will collapse under the weight of duplicative litigation.

This case illustrates the problem. Secretary of State Rubio determined that respondent's Hamas associations and advocacy compromised the United States' foreign-policy interests, thereby rendering him deportable. The Department of Homeland Security thus initiated respondent's removal proceedings, and also ordered that he be detained pending those proceedings. The very next day, respondent filed a habeas petition in district court, claiming that he was being unlawfully targeted for his advocacy and associations. But those claims—which go to the validity of his apprehension, detention, and removal in equal force—all stem from respondent's objection to being placed in removal proceedings in the first place. That is, his challenge to his detention is entirely derivative of his challenge to his being removed; and in turn, if respondent is able to use these claims to challenge his detention, he can simply front-run the PFR process entirely, and get a court to answer now the same legal questions that go to the legality of his removal. See App., *infra*, 66a, 86a-88a (Wilkinson, J., dissenting).

This case also exemplifies a recurrent fact pattern that has divided the circuits, with the Third Circuit holding the INA bars such claims, and the Second Circuit recently granting en banc review to settle conflicting answers to this question between a merits and stay panel in the same case. See *Khalil*, 164 F.4th at 273;

Mahdawi v. *Trump*, 183 F.4th 103, 123 (2d Cir. 2026). As for the decision below, the Fourth Circuit expressly "disagree[d]" with the Third Circuit, and the merits panel of the Second Circuit. App., *infra*, 54a; see *id.* at 54a-55a & n.25. In contrast, that court of appeals held that aliens have an unrestricted ability to file habeas petitions in district court so long as those petitions are nominally framed as targeting their detention, even when they raise claims that substantively challenge the validity of their removal. *Id.* at 41a-42a, 58a-59a.

This clear divide in the circuits warrants this Court's review now. As Judge Wilkinson observed in dissent, the decision below "rips an irreparable hole in the INA's jurisdiction-channeling scheme," "which the Supreme Court must once more" remedy. App., *infra*, 66a, 75a. And it hazards consequences that extend far beyond the immediate fact pattern. The decision to detain an alien pending removal is made with the decision to initiate removal. See 8 U.S.C. 1225, 1226(a). As a result, under the decision below, virtually "[e]very alien who is detained pending removal will now have a pathway into district court for a thinly veiled habeas challenge to his removability," just by restyling the supposed defects with his later removal as problems with his anticipatory detention. App., *infra*, 66a (Wilkinson, J., dissenting).

That is all practically disastrous. The existing circuit conflict threatens intolerable disuniformity in the administration of the INA. Tens of thousands of aliens are detained every year pending removal proceedings. For those in the Fourth Circuit, "[t]he duplication and delay that will result" will be "immeasurable," App., *infra*, 88a (Wilkinson, J., dissenting), with spillover consequences affecting immigration enforcement nationwide, as repeat parallel litigation drains sparse federal resources.

This case is an ideal vehicle for resolving the question presented. The Court may also wish to grant review alongside any petition for certiorari in *Khalil*, which is currently due with this Court on October 19, 2026. *Khalil* v. *Trump*, No. 26A90 (Sept. 17, 2026). Granting both petitions would guard against the possibility that either case might become moot (for example, due to the alien's departure), and thus could help to ensure that this Court will be able to resolve this significant jurisdictional question during this Term.

STATEMENT

A. Legal Background

1. The INA establishes a detailed framework for the removal of aliens who enter or remain in this country without authorization, or engage in conduct that renders them inadmissible or deportable. *Campos-Chaves* v. *Garland*, 602 U.S. 447, 451 (2024). "The INA specifies the respective grounds of inadmissibility and deportability with which the Government can charge an alien." *Blanche* v. *Lau*, 146 S. Ct. 1981, 1986 (2026); see 8 U.S.C. 1182(a), 1227(a). Relevant here, the INA provides that an alien "is deportable" if the "Secretary of State has reasonable ground to believe" that the alien's "presence or activities in the United States" "would have potentially serious adverse foreign policy consequences for the United States." 8 U.S.C. 1227(a)(4)(C)(i).

2. Except where the INA otherwise specifies, a removal proceeding under 8 U.S.C. 1229a is the "sole and exclusive procedure" for determining whether an alien may be "removed from the United States." 8 U.S.C. 1229a(a)(3). Removal proceedings under Section 1229a typically include a hearing before an immigration judge (IJ), and can include an appeal to the Board of Immigration Appeals (BIA). See 8 U.S.C. 1229a. Once an IJ

issues an order of removal, that order becomes "final" upon the earlier of when the BIA affirms it, or when the period of time to appeal to the BIA runs out. 8 U.S.C. 1101(a)(47)(B); *Riley* v. *Bondi*, 606 U.S. 259, 267 (2025).

The INA also establishes a framework for "[j]udicial review of a final order of removal." 8 U.S.C. 1252(a)(1). That review is initiated by the filing of a "petition for review" in the appropriate court of appeals "not later than 30 days after the date of the final order of removal." 8 U.S.C. 1252(b)(1). The INA generally provides that, subject to exceptions not applicable here, "a petition for review filed with an appropriate court of appeals * * * shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of [the INA]." 8 U.S.C. 1252(a)(5).

The INA's jurisdiction-stripping or channeling provisions ensure that the PFR process is "the sole and exclusive means for judicial review of an order of removal." 8 U.S.C. 1252(a)(5). Most relevant here, Section 1252(b)(9) provides: "Judicial review of all questions of law and fact * * * arising from any action taken or proceeding brought to remove an alien from the United States * * * shall be available only in judicial review of a final order under this section." 8 U.S.C. 1252(b)(9). This Court has described Section 1252(b)(9) as a "zipper clause," because it is designed to "consolidate[]"—that is, zip—an alien's "various challenges arising from [a] removal proceeding" into a single "petition for review * * * considered by the courts of appeals." *Nasrallah* v. *Barr*, 590 U.S. 573, 580, 589 (2020). This consolidation is meant to broadly "eliminat[e] review in the district courts." *Id.* at 580; accord *Guerrero-Lasprilla* v. *Barr*, 589 U.S. 221, 230-231 (2020). The zipper clause declares "no court shall have jurisdiction" to review orders of removal or "such questions of law or fact" outside of the PFR process. 8 U.S.C. 1252(b)(9).

Section 1252(g) supplements the prohibition on judicial review outside the PFR process. It states that, except as otherwise provided in the INA, "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action * * * to commence proceedings, adjudicate cases, or execute removal orders against any alien." 8 U.S.C. 1252(g). As with the zipper clause, Section 1252(g) aims to curb "the deconstruction, fragmentation, and hence prolongation of removal proceedings," *Reno* v. *American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999).

3. The INA also contains various provisions that vest the Executive with significant authority to detain aliens pending removal proceedings and before final removal. The relevant provision here, 8 U.S.C. 1226, empowers the government to "arrest[]" and "detain[]" "an alien" "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. 1226(a); see *Nielsen* v. *Preap*, 586 U.S. 392, 397 (2019). The government must decide whether to detain an alien under Section 1226 upon initiating removal proceedings, 8 C.F.R. 236.1(b), which detention decision may normally be revisited in bond hearings, 8 C.F.R. 1003.19.[1] While detaining aliens during their removal proceedings entails "considerable expense" for the government, allowing

[1] This case does not present questions about the scope of 8 U.S.C. 1225(b)(2)(A), which mandates detention of certain aliens who are "applicant[s] for admission." Respondent is not an applicant for admission because he was already "in and admitted to the United States" on a visa. 8 U.S.C. 1227(a); see C.A. Doc. 126, at 1 (Mar. 24, 2026). Questions regarding the scope of Section 1225(b)(2)(A) are presented in the government's pending petition for a writ of certiorari in *Putra* v. *Lopez-Campos*, No. 25-1415 (filed June 22, 2026).

them to "reside in this country" carries the "risk that [they] may not later be found." *DHS* v. *Thuraissigiam*, 591 U.S. 103, 108 (2020). In any given year, DHS holds tens of thousands of aliens in detention pending completion of their removal proceedings. See ICE, *Annual Report Fiscal Year 2024*, at 21-26 (Dec. 19, 2024), https://perma.cc/LRJ4-PHTK (2024 Annual Report).

B. Factual And Procedural Background

1. Respondent Badar Khan Suri is a native and citizen of India who arrived in the United States in 2022 on a non-immigrant J-1 visa to work as a postdoctoral fellow at Georgetown University. App., *infra*, 3a. J-1 visas are given to aliens who have "no intention of abandoning" their "residence in a foreign country," but wish to "com[e] temporarily to the United States" to enroll in an approved program for teaching, training, studying, or conducting research. 8 U.S.C. 1101(a)(15)(J); see 22 C.F.R. 41.12.

In March 2025, Secretary Rubio determined that respondent's continued "presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States." 25-cv-10685 D. Ct. Doc. 315, at 56-57 (D. Mass. Jan. 22, 2026). Based on information supplied by multiple federal immigration-enforcement agencies, the Secretary found that respondent's father-in-law is "a senior Hamas figure," and respondent had personally "expressed support" for Hamas leadership. 25-cv-10685 D. Ct. Doc. 315-15, at 19-21. The Secretary also concluded that respondent was "involve[d] in antisemitic activities" in the United States, including "actively spread[ing] [Hamas] propaganda[,] promot[ing] antisemitism on social media," and contributing to a "hostile environment for Jewish students" on Georgetown's campus. 25-cv-10685 D. Ct.

Doc. 315, at 56-57. Secretary Rubio thus determined that respondent's "activities and presence" "in the United States" risked undermining the Nation's broader "policy to combat antisemitism around the world and in the United States," and also risked impairing the "peace process underway in the Middle East" and efforts at "peacefully resolving the Gaza conflict." *Id.* at 57.

As a result of Secretary Rubio's determination under 8 U.S.C. 1227(a)(4)(C), respondent became "deportable" under the INA. See 8 U.S.C. 1227(a). Days later, DHS issued a "Notice to Appear" to respondent, notifying him of the Secretary's determination and his removability based on that ground. D. Ct. Doc. 26-1, at 6 (Apr. 1, 2025).

DHS also filed the Notice to Appear with the Immigration Court, initiating removal proceedings. D. Ct. Doc. 26-1, at 6. Those removal proceedings have continued in parallel with the court proceedings below. In November 2025, the IJ found respondent to be removable. Respondent's removal proceedings remain pending before the IJ.

2. On the same day that it served respondent with the Notice to Appear, DHS arrested respondent in Arlington, Virginia pursuant to an administrative warrant. D. Ct. Doc. 26-1, at 2. DHS initially detained respondent in Arlington, Virginia, and then transferred him to a facility in Alvarado, Texas, following brief stops in central Virginia and Louisiana. *Id.* at 2-4.

Soon after respondent's arrest, he filed a habeas petition in the United States District Court for the Eastern District of Virginia, D. Ct. Doc. 1 (Mar. 18, 2025), which he amended twice, D. Ct. Docs. 34 (Apr. 8, 2025), 92 (June 30, 2025). Respondent raised various constitutional and administrative claims, all arguing (as relevant) that respondent's detention was the product of an unlawful "Policy" whereby the United States would "retaliate against and punish" aliens "supportive of Palestinian rights or critical of Israel[]" by apprehending, detaining, and removing them. D. Ct. Doc. 92, at 32, 36; see *id.* at 2 (defining supposed "Policy"). Among other things, respondent maintains that this initiative—brought to bear on him by the "Rubio Determination"—renders his detention retaliatory (in violation of the First Amendment), punitive and discriminatory (in violation of the Fifth Amendment), and unlawful under the Administrative Procedure Act. See *id.* at 3, 31-39. As for relief, the petition principally asks for the court to enjoin the "Policy," declare it unlawful, and order his release. *Id.* at 39-41.

3. Over the course of three proceedings, the district court ordered that the government release respondent and prohibited the government from removing him.

On March 20, 2025, the district court issued an *ex parte* order under the All Writs Act, 28 U.S.C. 1651(a), for the sole purpose of "preserv[ing] its jurisdiction * * * pending a ruling on the Petition." App., *infra*, 89a. That order provided that respondent "shall not be removed from the United States unless and until the Court issues a contrary order." *Id.* at 89a-90a.

Next, on May 6, 2025, the district court denied the government's motion to dismiss respondent's habeas petition. D. Ct. Doc. 60. The court rejected the government's argument that the court lacked habeas jurisdiction because respondent had not been physically present in the Eastern District of Virginia when he had filed his original habeas petition. D. Ct. Docs. 59, at 9 (May 6, 2025); D. Ct. Doc. 60, at 1.

Finally, on May 14, 2025, the court granted respondent's motion to return him to Virginia from Texas and to release him on bail during the pendency of his habeas proceedings, concluding respondent raised "substantial constitutional claims" that he was detained in retaliation for his advocacy and associations. App., *infra*, 91a-92a, 116a-121a. As relevant here, the court rejected the government's argument that the INA—specifically, Sections 1252(b)(9) and 1252(g)—stripped that court of jurisdiction to award such relief. *Id.* at 115a-116a. The court also declined to stay its order pending appeal. *Id.* at 92a, 126a.

4. The government timely appealed the district court's March 20 order not to remove respondent and its May 14 order to release him from custody. D. Ct. Doc. 66 (May 15, 2025). It also sought a stay of the district court's release order. C.A. Doc. 4 (May 23, 2025).

a. In July 2025, the Fourth Circuit denied the government's motion to stay the district court's May 14 order pending appeal. App., *infra*, 152a. As relevant here, the court held that the government had not made a "strong showing" that either Sections 1252(b)(9) or 1252(g) stripped the district court of jurisdiction over respondent's habeas petition (and related motion for bail). *Id.* at 144a-150a.

Judge Wilkinson dissented. App., *infra*, 153a-157a. He would have held that "when the government detains an alien under § 1226(a) * * * the detention arises from the commencement of proceedings or adjudication of cases." *Id.* at 155a-156a. Respondent's motion was thus the very sort of "collateral attack[] on [his] deportation proceeding" that the INA's jurisdictional bars precluded. *Id.* at 156a.

b. In July 2026, the Fourth Circuit affirmed the district court's orders compelling the government to release respondent and prohibiting his removal. App., *infra*, 1a-65a. The court of appeals rejected the government's arguments that the INA had stripped the district court of jurisdiction. *Id.* at 33a. As for 8 U.S.C. 1252(b)(9), the court primarily held that it only applied once there was an "order of removal," and no such order had been entered yet here. *Id.* at 44a-46a. As for 8 U.S.C. 1252(g), the court distinguished between challenges regarding one's detention and challenges concerning one's removal. In that court's view, Section 1252(g) had nothing to say about the former, because removal is a "legally separate" governmental action, distinct from the decision to "commence [removal] proceedings." App., *infra*, at 36a. The Fourth Circuit acknowledged that its decision conflicted with those of the Third and Second Circuits, which had both held the INA "deprived a district court of jurisdiction over * * * similar habeas petition[s]." *Id.* at 54a-61a & n.25.[2]

Judge Wilkinson again dissented. App., *infra*, 66a-88a. In his view, respondent's suit should have been barred under both Sections 1252(b)(9) and 1252(g), because the decision to detain respondent arose from both an action taken to remove him, as well as the decision to commence removal proceedings against him. *Id.* at 71a-85a. In dramatically narrowing those bars, Judge Wil-

[2] On September 3, 2026, the Second Circuit *sua sponte* granted rehearing en banc in that case. 25-1113 C.A. Doc. 244.1. That court also ordered that proceedings be held in abeyance "in the event that the Supreme Court in this or another matter grants certiorari on the following question which is presented in this case: whether the district court lacked subject matter jurisdiction to grant habeas relief to the petitioner in light of any provision of 8 U.S.C. § 1252." *Id.* at 2.

kinson warned, the panel created an "ill-conceived and unpersuasive loophole[]" that will be exploited by thousands of aliens, all of whom now have a ready "pathway" to district court to collaterally attack their removal, just by restyling their claims as attacks on their detention. *Id.* at 66a, 87a.

REASONS FOR GRANTING THE PETITION

The Fourth Circuit below held that any alien detained during his removal proceedings can immediately challenge that detention in a habeas petition filed in district court, even where the alien's detention claims are all derivative of his legal objections to his ultimate removal. That decision contravenes the INA, avowedly conflicts with an indistinguishable decision of the Third Circuit, and threatens significant disruption. Now, any alien detained in the Fourth Circuit can front-run the PFR process by collaterally attacking his removal in a habeas petition nominally directed toward his detention pending that removal. This Court's review is warranted to resolve a circuit conflict over a question of immigration jurisdiction that affects tens of thousands of cases.

A. The Decision Below Is Wrong

The INA strips jurisdiction from the federal district courts over any claim "arising from" either "any action taken or proceeding brought to remove an alien from the United States," or "the decision or action" "to commence [removal] proceedings." 8 U.S.C. 1252(b)(9) and (g). Instead, the INA provides that a "petition for review filed with an appropriate court of appeals" shall be the "sole and exclusive means for judicial review of an order of removal." 8 U.S.C. 1252(a)(5). Those provisions foreclose aliens from collaterally challenging the bases for their removal by filing habeas petitions that raise the same basic claims just as defects to their detention.

1. The Fourth Circuit agreed (with some understatement) that respondent's detention-related claims had "substantial substantive overlap" to his removal-related claims. App., *infra*, 42a. Even so, it held that "none of the pertinent INA provisions deprive the district court of habeas jurisdiction" over the claims respondent presses in his habeas petition, because his habeas petition seeks "relief from detention" rather than "relief from removal." *Id.* at 33a, 42a; see *id.* at 62a-65a (upholding district court's authority to grant release pending the resolution of the habeas petition).

The decision below defies the INA's plain text. The INA's zipper clause is clear: "Judicial review" of "*all questions of law and fact*" "arising from any action taken or proceeding brought to remove an alien from the United States" is "available *only* in judicial review of a final order" via a PFR filed in a court of appeals. 8 U.S.C. 1252(b)(9) (emphases added). As a result, "*legal questions* challenging the government's very basis for trying to remove" an alien may be reviewed only in a PFR. *Khalil* v. *President*, 164 F.4th 259, 274 (3d Cir. 2026) (per curiam). That is so, critically, even when a legal question also goes to the validity of an alien's detention. Where detention claims are "inextricably intertwined with the claim that removal itself is unlawful," *Mahdawi* v. *Trump*, 183 F.4th 103, 117 (2d Cir. 2026), they necessarily raise "questions of law" "arising from" "proceeding[s] brought to remove an alien," 8 U.S.C. 1252(b)(9).

As such, so long as a legal question *can* be resolved by a court of appeals by way of a PFR, that question *must* be resolved by a court of appeals on a PFR—again, even if that question would also speak to the legality of a subsequent step in the removal process, such as apprehension or detention. See *Khalil*, 164 F.4th at 274. Otherwise, the very questions the INA insists must wait for the court of appeals would be already answered by a district (and circuit) court in the context of detention, perhaps before a removal order even issues.

Section 1252(g) reinforces the conclusion that the INA bars habeas petitions like respondent's. Again, that provision states that, "[e]xcept as provided in this section," "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action * * * to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. 1252(g). If a "cause or claim" challenging an alien's detention is substantively identical to a challenge about the government's decision to "commence proceedings" in the first place, Section 1252(g) applies in equal force. *Ibid.* An alien cannot accomplish indirectly what the INA expressly prohibits him from doing directly.

This Court's precedents further undercut the Fourth Circuit's position. In *Jennings* v. *Rodriguez*, 583 U.S. 281 (2018), Justice Alito's opinion for the plurality observed that whatever the outer bounds of the zipper clause, it covers aliens "challenging the decision to detain them in the first place or to seek removal." *Id.* at 294; see *id.* at 315-318 (Thomas, J., concurring in part and concurring in the judgment) (adopting broader reading). That describes respondent's habeas petition to a tee, which challenges the very decision to detain him as part of the government's decision to seek to remove him. See App., *infra*, 73a-75a (Wilkinson, J., dissenting). Indeed, respondent's entire suit rises and falls on the notion that Secretary Rubio's determination is unlawful (as the product of an illegal targeting "Policy"), tainting his apprehension, detention, and removal.

That is precisely what the *Jennings* plurality said falls within the heartland of Section 1252(b)(9)—a collateral attack on removal, resting on claims that go to the validity of any removal order. See *Khalil*, 164 F.4th at 276.

The Fourth Circuit's rule creates a roadmap for circumventing the INA's careful jurisdiction-channeling scheme. Indeed, the decision below makes pre-PFR review of the legality of an alien's removal "available as a matter of course." App., *infra*, 75a (Wilkinson, J., dissenting). Once more, in the Fourth Circuit, an alien can now take arguments that his removal is unlawful and repackage them as arguments for why his detention in service of that removal is unlawful. That alien can present them to the nearest district court the day after he is served with a Notice to Appear. *Id.* at 7a, 9a. Should he succeed in district court, he can "use issue preclusion or law of the case in the later PFR, leaving that court nothing to decide," *Khalil*, 164 F.4th at 275—thus requiring the government "to litigate the alien's removability in two forums and win in both," App., *infra*, 87a (Wilkinson, J., dissenting). That quagmire replaces the INA's system of consolidated review with "the paralysis of duplicative process" and subverts the scheme's entire point, which was to "prevent district courts from interfering in removal proceedings." *Id.* at 86a-87a.

2. The Fourth Circuit's contrary justifications lack merit.

First, the Fourth Circuit rested its holding on the distinction between removal and detention. App., *infra*, 42a. Because "relief from detention" is not the same as "relief from removal," that court reasoned, aliens may file any habeas petitions challenging their detention pending removal, even when that challenge is based on grounds that would also invalidate their removal. *Ibid.*

That reasoning misreads the zipper clause, which is triggered by "all *questions* of law" that "aris[e] from" removal actions or proceedings. 8 U.S.C. 1252(b)(9) (emphasis added); see *Khalil*, 164 F.4th at 274-276. Whatever relief a habeas petition seeks, the plain meaning of the zipper clause is that the petition cannot present "questions of law" that can otherwise be brought in a PFR. See p. 14-15, *supra*. It thus does not matter whether an alien is challenging a distinct action (detention) or asserting a distinct injury (from such detention); so long as the petition rests on legal questions whose answers would dictate the validity of any removal, those questions must wait for the PFR process. *Mahdawi*, 183 F.4th at 120.

The Fourth Circuit's reasoning also runs afoul of Section 1252(g). Where a "cause or claim" targets in substance the decision to "commence [removal] proceedings" to begin with, it falls naturally within Section 1252(g)'s terms, even if the requested relief runs directly against a distinct governmental action. 8 U.S.C. 1252(g). Once more, this case illustrates the point. Respondent's theory is that his detention pending completion of his removal proceedings is unlawful because the government should never have initiated those proceedings in the first place. In every way that matters, his habeas petition is a challenge to DHS's "decision * * * to commence [removal] proceedings." *Ibid.*

Second, relying on Section 1252(b)'s title ("Requirements for review of orders of removal"), the court of appeals held that the zipper clause applies only once an order of removal has been issued. App., *infra*, 44a-46a. Thus, where—as here—an alien challenges his detention pending removal before any such order has issued, Section 1252(b)(9) has no role to play. See *id.* at 44a.

This too defies the text. Under the zipper clause's plain terms, "[j]udicial review of all questions of law and fact" "arising from" removal proceedings "shall be available *only* in judicial review of a final order." 8 U.S.C. 1252(b)(9) (emphasis added). The natural implication is not that judicial review is permitted until there is an order of removal—at which point, the only next stop would be a court of appeals. Instead, Section 1252(b)(9) provides that there is no judicial review until there is an order of removal, because that is the sole means for obtaining judicial review. If there is no "final order," judicial review is "deferr[ed]" "until there is" one. App., *infra*, 76a (Wilkinson, J., dissenting).

That is confirmed by the fact that Section 1252(b)(9) is also clear that absent such a final order of removal, "no court shall have jurisdiction" "to review such an order *or such questions of law or fact*" (emphasis added). If Section 1252(b)(9) only applied once a final order of removal was issued, the latter clause would make no sense. See App., *infra*, 76a (Wilkinson, J., dissenting).

The text's best reading must control over Section 1252(b)'s title. *Dubin* v. *United States*, 599 U.S. 110, 121 (2023). Especially so because there is no tension between the two. Contrary to the court of appeals' assumption, the channeling requirement just described *is* a "[r]equirement[]" "[w]ith respect to review of an order of removal," 8 U.S.C. 1252(b), because it limits what a federal court may review until there is a final order.

Further, the Fourth Circuit's view is in serious tension with this Court's precedents. In *Jennings*, this Court considered a pre-final-order detention challenge, and nowhere in the plurality's analysis did it suggest that the absence of a final order answers the Section 1252(b)(9) question. To the contrary, the plurality affirmed that Section 1252(b)(9) would encompass aliens "challenging the decision to detain them in the first place," which by definition would come before any order of removal becomes final. *Jennings*, 583 U.S. at 294; see also *id.* at 315-318 (Thomas, J., concurring in part and concurring in the judgment). Similarly, in *Reno* v. *American-Arab Anti-Discrimination Comm.*, 525 U.S. 471 (1999), this Court recognized that Section 1252(b)(9) would have "channel[ed] judicial review" of a challenge brought "[a]lmost immediately" after removal proceedings began, but for the fact that the suit predated Section 1252(b)(9)'s effective date. *Id.* at 473, 483.

Adopting the Fourth Circuit's view would also produce a "highly counterintuitive result." *Yellen* v. *Confederated Tribes of the Chehalis Reservation*, 594 U.S. 338, 360 (2021). Under the Fourth Circuit's interpretation, Section 1252(b)(9) would make judicial review perversely *more* available when there is *no* final order of removal. App., *infra*, 44a-46a. Rather than "consolidate judicial review * * * into one action," *Guerrero-Lasprilla* v. *Barr*, 589 U.S. 221, 230 (2020), the Fourth Circuit's approach would incentivize a profusion of district court suits throughout the duration of removal proceedings.

Third, the Fourth Circuit put significant weight on the presumption in favor of judicial review. App., *infra*, 33a-34a, 55a-56a. But that presumption has little or no purchase here; the INA "does not foreclose meaningful review," but "just streamlines the process for seeking it" by channeling all claims into a single round of litigation. *Id.* at 80a (Wilkinson, J., dissenting). Regardless, where, as here, Congress has spoken to the "jurisdiction" of the federal courts in a provision cabining "judicial review," 8 U.S.C. 1252(b)(9), courts should honor that plain language and not artificially expand judicial power at the expense of Congress's intended direction. See *Mullin* v. *Doe*, 146 S. Ct. 2121, 2134 (2026).

B. The Decision Below Creates A Circuit Conflict

The Fourth Circuit expressly created a circuit conflict on the question presented. In that circuit, an alien who is detained during his removal proceedings may take all the claims he would normally make in a petition for review and repackage them immediately in a district court habeas challenge to his detention. By contrast, in the Third Circuit, such petitions are barred by the INA. While the Second Circuit has since granted rehearing en banc of its decision addressing the same question, p. 12 n.2, *supra*, the en banc court's decision would not eliminate the conflict. And the Second Circuit has already anticipated the possibility of this Court's review, ordering that its en banc proceedings will be held in abeyance should this Court take up the question presented. *Ibid.*

1. The Fourth Circuit conceded that its reading "disagree[d] with" the one adopted by the Third Circuit, as well as that of a merits panel of the Second Circuit. App., *infra*, 54a-55a & n.25. Both of those courts interpreted the INA to preclude virtually identical attempts to collaterally attack an alien's removal via habeas petitions. *Khalil*, 164 F.4th at 281; *Mahdawi*, 183 F.4th at 123.

In both *Khalil* and *Mahdawi*, DHS placed an alien into removal proceedings upon Secretary Rubio's determination that his presence was adverse to the Nation's foreign-policy interests. That determination was based on, among other things, the aliens' participation in "antisemitic protests," engagement in "threatening rhetoric and intimidation of pro-Israeli bystanders," and "call[s] for Israel's destruction." 25-cv-10685 D. Ct. Doc. 315, at 27-28, 36-37. Both aliens were detained pending removal; both filed habeas petitions challenging that detention; and both rested those challenges on the ground their detention (along with their apprehension and potential removal) stemmed from the same supposed policy that respondent alleges is unlawful. *Khalil*, 164 F.4th at 267; *Mahdawi*, 183 F.4th at 110-111.

In both cases, the court of appeals held that Section 1252(b)(9) precluded the alien's suit. *Khalil*, 164 F.4th at 273-281; *Mahdawi*, 183 F.4th at 114-123. The Second Circuit panel expressly agreed with the Third Circuit and relied heavily on that court's reasoning. *Mahdawi*, 183 F.4th at 113. Again, the Fourth Circuit admittedly "diverge[d]" from these decisions. App., *infra*, 15a.

2. The decision below creates further tension with other courts of appeals as to the scope of Section 1252(g). The Fourth Circuit's holding that Section 1252(g) can be entirely evaded by restyling a suit challenging removal as a challenge to detention pending that removal is "in direct conflict with the Eleventh Circuit[]." App., *infra*, 84a (Wilkinson, J., dissenting); see *Öztürk* v. *Hyde*, 155 F.4th 187, 190 (2d Cir. 2025) (Menashi, J., concurring in the denial of rehearing en banc) (making a similar point). The Eleventh Circuit has instead interpreted Section 1252(g) as covering the "decision" to "detain [an alien] during his removal proceedings" as "closely connected to the decision to commence proceedings." *Alvarez* v. *U.S. ICE*, 818 F.3d 1194, 1203 (2016), cert. denied, 582 U.S. 930 (2017).

The decision below attempted to distinguish the Eleventh Circuit's decision in *Alvarez* as involving *Bivens* claims that concerned conduct while the alien was detained. App., *infra*, 40a-41a n.17. But *Alvarez* did not only concern such claims—it also involved a distinct "challenge to ICE's decision to require Alvarez to attend removal proceedings," as well as "challenges to ICE's decision to take him into custody and to detain him during his removal proceedings." 818 F.3d at 1203. Those claims, the Eleventh Circuit held, were squarely barred by Section 1252(g). *Id.* at 1203-1204. The Fourth Circuit made no effort to explain how its decision was consistent with those holdings. Nor could it.

C. The Decision Below Warrants This Court's Review

1. The question presented is remarkably important. Whether an alien can collaterally attack his removal by filing a habeas petition challenging his detention potentially affects thousands upon thousands of cases, well beyond the immediate fact pattern at issue here. See App., *infra*, 88a (Wilkinson, J., dissenting). As Judge Wilkinson explained, at least within the Fourth Circuit, virtually "[e]very alien who is detained pending removal will now have a pathway into district court for a thinly veiled habeas challenge to his removability," just by restyling the supposed defects with his later removal as problems with his current detention. *Id.* at 66a. That "neuter[s] Congress's jurisdiction-channeling scheme," "leaves the statute in tatters," and places a significant operational burden on the government's ability to administer an efficient immigration system. *Id.* at 75a, 88a (Wilkinson, J., dissenting).

The practical problems created by this circuit conflict are particularly acute given the mechanics of immigration enforcement. The Executive detains tens of thousands of aliens every year as part of pending removal proceedings. See, *e.g.*, 2024 Annual Report 21-26. Such detainees frequently cross state lines while being transferred to their ultimate detention facility. See D. Ct. Docs. 26-1; D. Ct. Doc. 57-1 (May 2, 2025). Based on the Fourth Circuit's view of habeas jurisdiction, see App., *infra*, 16a-33a, any alien detainee who is detained in the Fourth Circuit at any point may well be able to take advantage of the decision here, *id.* at 33a.

Left unchecked, such suits risk producing an overwhelming litigation burden on both the government and the courts. App., *infra*, 87a-88a (Wilkinson, J., dissenting). Each such suit will require the government "to litigate the alien's removability in two forums and win in both." *Id.* at 87a. And even where an alien's claims are meritless, the existence of those claims will still drain governmental time and resources, further impeding any efforts at an efficient system of immigration enforcement nationwide. *Id.* at 87a-88a. Simply put, the "duplication and delay that will result" from the decision below are "immeasurable." *Id.* at 88a.

2. This case also presents an excellent vehicle for resolving the question presented. The Fourth Circuit addressed both Sections 1252(b)(9) and 1252(g) in its decision and avowedly created a circuit conflict with other court of appeals decisions arising from similar facts. At a minimum, the Court should grant review in this case.

That being said, to ensure that these important issues are resolved expeditiously, this Court should also grant certiorari in *Khalil*. Justice Alito has extended the time to file a petition for a writ of certiorari in *Khalil* until October 19, 2026.[3] If the petitioner ultimately files

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[3] The government opposed the extension request in *Khalil*. See Gov't Br., *Khalil* v. *Trump*, No. 26A90 (July 17, 2026). At the time,

by that date, this Court should grant review in that case as well. Doing so would guard against the possibility of mootness present in cases like this, where removal proceedings remain ongoing. For instance, should an alien be provided and accept the option of voluntary departure, his habeas claims would be rendered moot. Should the alien be ordered removed, he would no longer be detained under Section 1226(a). Compare 8 U.S.C. 1226(a), with 8 U.S.C. 1231(a)(2)(A). And should the alien's removal proceedings be terminated in his favor, there may be no petition for review in the case at all. See App., *infra*, at 81a (Wilkinson, J., dissenting).

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as the government emphasized in its brief, that case did not "satisfy the Court's ordinary certiorari criteria" because there was no "circuit split." *Id.* at 8-9. Now that the decision below has since engendered a conflict, granting certiorari in *Khalil* is appropriate and would facilitate this Court's timely and warranted review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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SEPTEMBER 2026

APPENDIX

TABLE OF CONTENTS

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-1560

BADAR KHAN SURI, PETITIONER-APPELLEE

v.

DONALD TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; ROBERT GUADIAN, IN HIS OFFICIAL CAPACITY AS FIELD OFFICE DIRECTOR OF WASHINGTON, IMMIGRATION AND CUSTOMS ENFORCEMENT; DAVID J. VENTURELLA, ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; MARKWAYNE MULLIN, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY; MARCO RUBIO, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; TODD BLANCHE, IN HIS OFFICIAL CAPACITY AS ACTING ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, RESPONDENTS-APPELLANTS

AND

JEFFREY CRAWFORD, IN HIS OFFICIAL CAPACITY AS WARDEN OF FARMVILLE DETENTION CENTER, RESPONDENT

THE INTERCEPT MEDIA, INC., MOVANT

IMMIGRATION LAWYERS, LAW PROFESSORS, AND SCHOLARS; HABEAS SCHOLARS; FREE SPEECH FOR PEOPLE, AMICI SUPPORTING APPELLEE

Argued: Mar. 17, 2026
Decided: July 23, 2026

Appeal from the United States District Court
for the Eastern District of Virginia, at Alexandria.
Patricia Tolliver Giles, District Judge.
(1:25-cv-00480-PTG-WBP)

Before WILKINSON, HARRIS, and BENJAMIN, Circuit Judges.

Affirmed by published opinion. Judge Benjamin wrote the opinion, in which Judge Harris joined. Judge Wilkinson wrote a dissenting opinion.

DEANDREA GIST BENJAMIN, Circuit Judge:

Dr. Badar Khan Suri came to the United States after receiving a J-1 exchange visa for a postdoctoral fellowship at Georgetown University. He and his wife reside in Rosslyn, Virginia, and have publicly opposed the war in the Gaza Strip on social media. As a result of their social media posts and associations, Suri was detained outside of his home by masked Immigration and Customs Enforcement (ICE) officers and was informed that he would be deported from the country. After detaining him, the Government—unbeknownst to Suri's family and counsel—moved him from state to state and detention center to detention center over the span of just a few days.

Suri filed a habeas petition in the United States District Court for the Eastern District of Virginia, where he lived, was first detained, and where the first three detention facilities holding him were located. The Government sought to dismiss Suri's habeas petition, contending that the district court lacked habeas jurisdiction because Suri was no longer detained in Virginia. The district court denied the Government's motion, finding that it had jurisdiction.

The Government appeals, asserting that habeas jurisdiction was not established, and even if it was, certain provisions of the immigration code stripped the district court of subject matter jurisdiction.

We disagree with the Government and affirm the district court in full. The district court had jurisdiction to hear Suri's habeas petition, and no provision within the immigration code deprived it of subject matter jurisdiction.

I. Background

A. Dr. Suri & His Arrest by ICE

Dr. Badar Khan Suri is an Indian national. He earned a Ph.D. in Peace and Conflict Studies at Jamia Millia Islamia, a university in New Delhi. After Suri completed his Ph.D., he applied for and received a postdoctoral fellowship at Georgetown University in Washington, D.C.

In 2022, Suri arrived in the United States on a J-1 exchange visa[1] to begin the fellowship. At Georgetown, Suri taught a course on Majoritarianism and Minority

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[1] Suri was participating in the J-1 exchange visitor program as a "research scholar," which is "a foreign national whose primary purpose is conducting research, observing, or consulting in connection with a research project at research institutions, corporate research facilities, museums, libraries, post-secondary accredited academic institutions, or similar types of institutions. 22 C.F.R. § 62.4(f). "A research scholar may also teach or lecture where authorized by the sponsor." *Id.*

Rights in South Asia. His wife, Mapheze Saleh, and his three children arrived in the United States soon after he began his fellowship. His children were admitted to the United States on derivative J-2 visas and thus are dependent on their father's status to enter and remain in the country. At the time of Suri's arrest, he and his family resided in Rosslyn, Virginia.

Saleh is a United States citizen of Palestinian descent; her father and some of her family still live in Gaza. During the war in Gaza, Saleh lost several family members and friends and often publicly voiced her opposition to the war on social media. On "a handful of occasions," Suri also made social media posts "expressing support for the Palestinian people, criticizing the death toll in Gaza, affirming international law principles, and criticizing U.S. support for Israel's war in Gaza." J.A. 105.[2]

In early March 2025, the United States Department of State announced a new program called "Catch and Revoke," where it would use artificial intelligence to review "tens of thousands of student visa holders' social media accounts" for evidence of "alleged terrorist sympathies." J.A. 110. The goal was to "cancel the visas of foreign nationals who appear to support Hamas or other designated terror groups." *Id.* Once identified, Secretary of State Marco Rubio would issue a determination, finding that the noncitizen's presence in the United States compromises American foreign policy interests. The United States Department of Homeland Security (DHS) would then work to locate, apprehend, detain, and, ultimately, seek to deport these individuals. The

[2] Citations to "J.A." refer to the joint appendix filed by the parties. The J.A. contains the record on appeal from the district court. Page numbers refer to the "J.A. #" pagination.

government proceeded to put its program into action, detaining students and scholars like Mahmoud Khalil, Rümeysa Öztürk, and others on the stated basis of their political speech and associations. *See Am. Ass'n of Univ. Professors v. Rubio*, 802 F. Supp. 3d 120 (D. Mass. 2025).

Suri became one of the government's first targets under this program. DHS Assistant Secretary for Public Affairs Tricia McLaughlin announced on the social media platform X, that:

> Suri was a foreign exchange student at Georgetown University actively spreading Hamas propaganda and promoting antisemitism on social media. Suri has close connections to a known or suspected terrorist, who is a senior advisor to Hamas. The Secretary of State issued a determination on March 15, 2025 that Suri's activities and presence in the United States rendered him deportable under INA [Immigration and Nationality Act] section 237(a)(4)(C)(i).

J.A. 302-03.[3]

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[3] McLaughin mistakenly wrote that Suri was a foreign exchange student, as he was a J-1 research scholar. And the Government has yet to disclose Rubio's March 15 determination memorandum on the record in this case. That said, the court takes judicial notice that this memo appears to have been disclosed as part of litigation in the District of Massachusetts, and it states that Suri was designated removable as a foreign policy threat solely based on what Secretary Rubio determined to be his "direct connection to Hamas leadership," his "involvement in antisemitic activities" on campus, and his "actively spread[ing] [Hamas] propaganda and promot[ing] antisemitism on social media." Certified Administrative Record, *Am. Ass'n of Univ. Professors v. Rubio*, No. 25-cv-10685-WGY (D. Mass. Jan. 22, 2026), ECF No. 315 at 56-57.

DHS then made a custody determination that Suri would be detained pursuant to 8 U.S.C. § 1226(a), which provides that a noncitizen "may be . . . detained pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a); J.A. 84.

On March 17, 2025, at approximately 9:30 p.m.,[4] Suri was returning home after teaching and observing iftar, the evening meal that ends the daily Ramadan fast. He noticed several black, unmarked cars near his apartment building. Before he could enter his apartment building, a man wearing a face covering and dark clothing approached him and asked if he was Badar. He responded that he was. Suri then called his wife to come downstairs. The masked officers told Suri and his wife that they were from DHS; that Suri's "student visa" had been revoked; and that he was being arrested because of his "social media." J.A. 113-14. Suri clarified that he had a J-1 exchange visa, but the officer told him that "it was the same thing, and that it was also revoked." J.A. 114. Suri was then escorted into the dark-colored SUV. During the transport, officers informed him that "someone high up in the Secretary of State's office doesn't want you here," and that he would be deported "today." J.A. 135.

B. Movement Between States and Detention Centers

Over the first 11 hours after Suri's arrest, he was moved to three different detention centers.

Suri was first taken directly to ICE's Enforcement and Removal Operations ("ERO") Washington Field Of-

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[4] Unless otherwise specified, all references to time are in Eastern Daylight Time ("EDT").

fice in Chantilly, Virginia. At the ICE field office in Chantilly, officers presented Suri with his notice to appear ("NTA").[5] The NTA listed "1209 Sunflower Ln, Alvarado, Texas 760092810" as his current residence—an address Suri had neither lived at nor been to. That address turned out to be the address of the Prairieland Detention Center in Texas. Suri asked about the incorrect Texas address, and an officer explained to him that it "was just computer generated, and it might be changed later on." J.A. 135. The NTA also listed a hearing date for May 6, 2025, before an immigration judge at "27991 Buena Vista Blvd, Los Fresnos, Texas 78566, Prairieland Detention Center." However, that address is not the Prairieland Detention Center but the Port Isabel Detention Center, which is approximately 500 miles away from the Prairieland Detention Center. Soon after, Suri was told that he would be transferred to Farmville, Virgina. He was allowed to call Saleh to inform her that he was being taken to Farmville, and that he had an immigration hearing in Texas on May 6, 2025.

The next day, March 18, at approximately 2:30 a.m., Suri arrived at the Farmville Detention Center. After only a few hours in Farmville, he was transferred again, this time to Richmond, Virginia. Suri reached the ERO Washington Office near Richmond, Virginia at 7:50 a.m. The officers did not allow him to call his wife to inform her of his new location. They also did not explain the reason for his transfer. Suri's stay in Richmond, however, was brief.

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[5] The NTA was issued around 9:47 p.m. on March 17, 2025—while Suri was still in Chantilly, Virginia. *Suri v. Trump* (*Suri II*), 785 F. Supp. 3d 128, 135 (E.D. Va. 2025).

Suri was removed from his cell in Richmond, shackled, put in a van, and driven away. When he asked an officer where they were going, the officer replied that he was not supposed to tell. After about an hour, Suri arrived at an airport and was put onto an airplane, along with several other shackled detainees. The airplane departed for Louisiana at 2:47 p.m.

On March 18 at 5:03 p.m., Suri arrived in Alexandria, Louisiana. At 6:42 p.m., he was booked into the Alexandria Staging Facility—a "super deportation center" where he could be "deported at any time." Suri was detained in Louisiana for three nights. After his first transfer from Chantilly to Farmville, Suri was unable to contact his wife or anyone else regarding his rapid transfers across state lines.

On March 20, Suri was told that he would be transferred to New York the next day, presumably to be deported. But on the morning of March 21, Suri was told that he instead would be driven to Texas. That evening at approximately 7:30 p.m., Suri arrived at the Prairieland Detention Center. It would be Suri's longest stop, as he was held there until his release on May 14, 2025.

C. Suri's Representation & Habeas Petition

On the evening Suri was arrested by ICE officers, Saleh's friend, Ashraf Nubani, notified attorney Hassan Ahmad of what had occurred. The next morning, Ahmad formally agreed to represent Suri. Ahmad discussed the details of Suri's arrest and detention with Saleh. She believed that Suri was being held in the Farmville Detention Center, since that was the last thing Suri shared with her about his location.

On March 18 at 2:11 p.m., Ahmad entered his appearance in Suri's immigration proceedings, which allowed him to view Suri's NTA. Although the NTA listed a Texas address as Suri's current residence, Ahmad did not rely on it (as Suri had never lived there) and continued to believe Suri was detained in Virginia, based on Saleh's information. Ahmad, working with other counsel, immediately began drafting a habeas petition. The team repeatedly checked the ICE online detainee locator, but Suri did not appear in the system. Unbeknownst to Ahmad, on the afternoon of March 18, Suri was in Richmond but en route to board a flight to Alexandria, Louisiana. At 5:59 p.m.—after Suri had landed in Alexandria, Louisiana, but before he was booked into the Alexandria detention facility—his habeas petition was filed in the United States District Court for the Eastern District of Virginia.

Suri's petition claimed that Secretary Rubio's determination and Suri's "targeting, arrest, transfer, and ongoing detention" violated the First Amendment and his Fifth Amendment right to due process. J.A. 21-24. As to his detention specifically, Suri alleged that he was detained "not to facilitate deportation, or to protect against risk of flight or dangerousness," but instead solely to retaliate against him for his speech. J.A. 23. And his detention, he further alleged, was an "attempt to chill" his future speech and that of others "who express support for Palestinian rights." J.A. 22. Suri requested that the district court, *inter alia*, enjoin his transfer to another jurisdiction, order his immediate release, and "[d]eclare that [the Government's] actions to arrest and detain [him] violate the First Amendment and Due Process Clause of the Fifth Amendment." J.A. 25. Moreover, in an amended petition filed after he was detained for multiple weeks, Suri claimed that he was being held in "degrading and harmful conditions" in which he was "forced to sleep on the floor of an overcrowded TV room, deprived of all but a few hours of sleep," "denied clean undergarments and adequate nutrition," and "subjected, with no valid basis whatsoever, to more severe restrictions and treatment than other detained individuals despite posing no danger to others." J.A. 125-26.

On March 19, two days after Suri was taken and moved without explanation through four detention centers, his name finally appeared in ICE's online detainee locator. It showed that he was being held at the Alexandria Staging Facility in Louisiana. Suri's counsel then filed a motion requesting the district court to direct the Government to return him to the Eastern District of Virginia and to bar Suri's removal from the United States while his petition was pending.

II. Procedural History

On March 20—the same day the Government notified Suri that he would be transferred to New York for deportation and the same day Suri's counsel filed the motion to bar his removal—the district court entered an order prohibiting the Government from removing Suri from the United States "unless and until the [c]ourt issues a contrary order." *Suri v. Trump* (*Suri I*), 2025 WL 914757, at *1 (E.D. Va. Mar. 20, 2025). The district court issued its order pursuant to its authority to preserve its jurisdiction under the All Writs Act ("AWA"), 28 U.S.C. § 1651. *Id.*

The Government moved to dismiss Suri's habeas petition, or in the alternative, to transfer venue.

The district court issued an opinion and order denying the Government's motion. *See Suri v. Trump* (*Suri II*), 785 F. Supp. 3d 128, 133-49 (E.D. Va. 2025). The district court explained that although habeas jurisdiction is usually conferred where a petition is filed in the district of confinement and the respondent has custody over the petitioner, there are well-recognized exceptions. *See Suri II*, 785 F. Supp. 3d at 137-38. It found that the circumstances here fit within two exceptions to the default habeas jurisdiction rules: the unknown custodian exception, and the exception borne out of Justice Kennedy's concurrence in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004) (Kennedy, J., concurring). *See id.* at 140-48.

The district court found that the unknown custodian exception applied because Suri was "held in an undisclosed location by an unknown custodian." *Id.* at 141 (quoting *Padilla*, 542 U.S. at 450 n.18). It stated that no "diligent attorney could have known that [Suri] was in Louisiana at the time he filed the petition." *Id.* at 142. The district court noted that Suri's NTA did not reference Louisiana, the ICE online detainee locator had no information on him, and Suri was not permitted to contact his wife until the evening of March 19, after his petition was already filed. *See id.* at 142, 144. Further, "even if it were possible for [Suri's] counsel to have discovered he was in Louisiana at 5:59 p.m., [his] counsel would not have known who to identify as [Suri's] immediate custodian." *Id.* at 142. Suri was not booked at the Alexandria Staging Facility until 6:42 p.m.—"almost an hour after the petition was filed." *Id.* The district court specifically noted that even the Government could not identify Suri's immediate custodian. *Id.*

The district court also found that the exception borne out of Justice Kennedy's concurrence in *Padilla* applied. *Id.* at 144-48. Justice Kennedy wrote that there should be an exception "if there is an indication that the Government's purpose in removing a prisoner were to make it difficult for his lawyer to know where the habeas petition should be filed" or "if the Government did inform the lawyer where a prisoner was being taken but kept moving him so filing could not catch up to the prisoner." *Id.* at 144-45 (citing *Padilla*, 542 U.S. at 454 (Kennedy, J. concurring)). "In these situations, Justice Kennedy believed that 'habeas jurisdiction would lie in the district or districts from which [the petitioner] had been removed.'" *Id.* at 145 (quoting *Padilla*, 542 U.S. at 454 (Kennedy, J. concurring)). The district court found that the Government's NTA was "design[ed] to forum shop and spirit [Suri] away from this [d]istrict before his counsel could file a petition," as the Government was "fully aware that listing [Suri's] current residence . . . would determine which immigration court would have jurisdiction over his proceedings." *Id.* at 146. And the Government's "myriad contradictory explanations combined with the inability for [Suri's] exceptionally diligent counsel to keep up with [Suri's] abnormal and rapid movement across state lines demands more flexible jurisdictional rules." *Id.* at 148.

Lastly, the district court declined to exercise its discretion to transfer Suri's petition to Louisiana or Texas. *Id.* It stated that doing so would ratify the Government's "attempt at forum shopping," and would force Suri to litigate his case "many states away from his lawyers and family," which would "meaningfully deprive him of their ability to aid in his representation for the duration of these habeas proceedings." *Id.*

Suri's counsel filed a motion for release on bail. The district court held a bail hearing and subsequently ordered for Suri "to be immediately released." *Suri v. Trump* (*Suri III*), 2025 WL 1392143, at *1 (E.D. Va. May 14, 2025). The district court conditioned his release, expressly requiring Suri to "participate in his removal proceedings." *Id.*

The Government appealed the district court's order not to remove Suri and the bail release order. It also petitioned for a stay of the release order pending appeal and for mandamus.[6]

This court issued an opinion denying the Government's requests for stay and mandamus. *See Suri v. Trump* (*Suri IV*), 2025 WL 1806692, at *1 (4th Cir. July 1, 2025). The court held that "the equities lie firmly in Suri's favor," as it agreed with the district court that "the unknown-custodian exception squarely applies." *Id.* at *4, *6; *see also id.* at *6 n.6 (adopting Justice Kennedy's reasoning from his *Padilla* concurrence as an alternative basis for holding that the district court had habeas jurisdiction). The court also held that the Government's argument that certain provisions of the immigration code deprived the district court of jurisdiction over

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[6] While not relevant to the Government's appeal here, it requested this court to issue a writ of mandamus "because the district court's order amounts to judicial usurpation of the Executive's exclusive statutory powers and preeminent constitutional powers over immigration." *Suri v. Trump* (*Suri IV*), 2025 WL 1806692, at *9 (4th Cir. July 1, 2025). This court denied the request, as the Government's "only substantive argument is that the district court lacked jurisdiction over Suri's habeas petition," and it already concluded that "the district court did possess habeas jurisdiction." *Id.*

Suri's habeas petition were unlikely to succeed. *See id.* at *7.

The Government now appeals, arguing that the district court lacked jurisdiction to enter its order to bar removal and its order granting release on bail. Appellant's Br. (ECF No. 36) at 10[7] (hereinafter "Opening Br."). The Government raises four main arguments. First, it asserts that Suri failed to satisfy the default habeas requirements of naming an immediate custodian and filing his petition in the district of confinement. *Id.* at 8. It further doubts whether any exception to the normal habeas rules exists. *Id.* at 8-9. Second, the Government argues that the district court abused its discretion in refusing to transfer Suri's habeas petition to Texas or Louisiana. *Id.* at 37-41. Third, even if the district court had habeas jurisdiction, the Government believes three provisions of the INA stripped the district court of authority to address Suri's claims regarding his detention. Those provisions, the Government says, preclude district court review of the Executive's authority to *initiate* removal proceedings, and that decision is inextricably intertwined with the decision to detain. *Id.* at 9; 8 U.S.C. §§ 1252(a)(5), (b)(9), (g). Finally, the Government contends that the district court erred in invoking the AWA because it "was not at risk of losing jurisdiction (assuming it had any to begin with)." Opening Br. at 9-10. As discussed below, we hold that none of these arguments withstand scrutiny. We address each in turn.

We have jurisdiction pursuant to 28 U.S.C. § 1292(a)(1).

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[7] Page numbers for citations to ECF documents utilize the page numbers in the red header on each document.

III. Analysis

This case is one of several that have arisen over the past year and a half presenting the same basic fact pattern: A student or scholar, in the United States on a valid student or exchange visa, is detained by DHS on the stated basis of his or her political speech, beliefs, or associations; shuttled across jurisdictions rapidly and often in secret; and detained for allegedly unconstitutional reasons and under allegedly unconstitutional conditions pending removal. And in each case, the Government insists that judicial review of the allegedly unconstitutional detention can come only after removal proceedings that can last for months or years. Until then, according to the Government, a detained noncitizen has no judicial recourse.

We disagree. For the reasons explained below, Congress' habeas jurisdiction statutes and Supreme Court case law permitted Suri to file a habeas petition in the district from which he was removed. And no provision of the INA deprived the district court of subject-matter jurisdiction to hear Suri's challenges to his allegedly unconstitutional detention. Our holding today aligns with this court's ruling on the Government's stay motion, *see Suri IV*, 2025 WL 1806692, as well as the Second Circuit's rulings on stay motions in two similar cases, *see Öztürk v. Hyde*, 136 F.4th 382 (2d Cir. 2025); *Mahdawi v. Trump*, 136 F.4th 443 (2d Cir. 2025). We recognize that it diverges from the Third Circuit's determination in *Khalil v. President, United States*, 164 F.4th 259 (3d Cir. 2026). But in our view, denying judicial review of detention claims like Suri's misreads Congress' statutes and undermines the protections guaranteed all persons on American soil by the writ of habeas corpus. *See*

Lochnar v. Thomas, 517 U.S. 314, 324 (1996) (identifying writ of habeas corpus as the Constitution's "best and only sufficient defen[s]e of personal freedom" (internal quotation marks omitted)).

A. Habeas Jurisdiction[8]

We review "the district court's factual findings with respect to jurisdiction for clear error and the legal conclusion that flows therefrom de novo." *Velasco v. Gov't of Indonesia*, 370 F.3d 392, 398 (4th Cir. 2004).

1. The Default Habeas Rules

For centuries, the writ of habeas corpus has been understood as a vital instrument to secure "freedom from unlawful restraint as a fundamental precept of liberty." *Boumediene v. Bush*, 553 U.S. 723, 739 (2008). The writ's protections are at their peak where a petition challenges "'the legality of Executive detention,'" rather than incarceration following criminal conviction. *Rasul v. Bush*, 542 U.S. 466, 474 (2004) (quoting *INS v. St. Cyr*, 533 U.S. 289, 301 (2001), *superseded by statute as recognized in Nasrallah v. Barr*, 590 U.S. 573, 580-81 (2020)). And "[t]he very nature of the writ demands that it be administered with the initiative and flexibility essential

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[8] The questions before us dually concern whether the district court had personal and subject-matter jurisdiction over Suri's habeas petition. *See Kanai v. McHugh*, 638 F.3d 251, 258 (4th Cir. 2011) (recognizing habeas jurisdiction as a matter of personal or venue jurisdiction); *see also Reno v. Am.-Arab Anti-Discrimination Comm.* (*AADC*), 525 U.S. 471, 482, 492 (1999) (describing 8 U.S.C. § 1252(g) as a "narrow" jurisdictional bar that may deprive a federal court of jurisdiction over a respondent's claims). Because there is no mandatory "sequencing of jurisdictional issues," *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999), we begin with whether the district court had habeas jurisdiction.

to insure that miscarriages of justice within its reach are surfaced and corrected." *Harris v. Nelson*, 394 U.S. 286, 291 (1969). 28 U.S.C. § 2241(a) provides district courts with the authority to grant writs of habeas corpus "within their respective jurisdictions."

In *Rumsfeld v. Padilla*, the Supreme Court explained the contours of habeas jurisdiction. 542 U.S. 426, 434-36 (2004). Generally, a habeas petition seeking to challenge present physical custody should be filed "in the district of confinement" and "the proper respondent to a habeas petition is 'the person who has custody over [the petitioner].'" *Id.* at 434, 447 (alteration in original) (quoting 28 U.S.C. § 2242). Petitioners are generally required to name "some person who has the immediate custody of the party detained"[9] rather than "the Attorney General or some other remote supervisory official." *Id.* at 435. When applying these rules, we generally look to where the petitioner was confined when their petition was filed. *See United States v. Little*, 392 F.3d 671, 680 (4th Cir. 2004) (noting that because petitioner was confined in Texas when his petition was filed, the Western District of North Carolina was an improper venue).

Even where these default habeas rules appear to be unsatisfied, those rules are not absolute. Two exceptions to the default habeas rules apply in this case: the unknown custodian exception and the exception borne out of Justice Kennedy's concurrence in *Padilla*. 542

[9] The Supreme Court has described an immediate custodian as a person that has "the ability to produce the prisoner's body before the habeas court." *Padilla*, 542 U.S. at 435; *see also Wales v. Whitney*, 114 U.S. 564, 574 (1885).

U.S. at 454 (Kennedy, J., concurring). Below, we discuss and apply each in turn.

2. The Unknown Custodian Exception[10]

When a detainee is held in a secret location, their attorneys "cannot be expected to file in the jurisdiction where [they are] held" as it "is impracticable to require the attorneys to file in every jurisdiction." *Demjanjuk v. Meese*, 784 F.2d 1114, 1116 (D.C. Cir. 1986) (Bork, J., in chambers) (allowing suspected war criminal held in confidential location to file a habeas petition in the D.C. Circuit). Thus, "it is essential that [the] petitioner not be denied the right to petition for a writ of habeas corpus" because they are in an unidentifiable location. *Id.*

The Government wrongly asserts that this "so-called unknown custodian exception" in *Demjanjuk* was "never actually recognized by the Supreme Court." Opening Br. at 25. The Supreme Court in *Padilla* expressly recognized the unknown custodian exception, stating that when "a prisoner is held in an undisclosed location by an unknown custodian, it is impossible to apply the immediate custodian and district of confinement rules." 542 U.S. at 45 n.18. It seems the Supreme Court took the exception as a given, explaining that there, the "identity of the immediate custodian" was not "shrouded . . . in secrecy." *Id.* at 449 n.17. Additionally, this court has previously applied the unknown custodian exception in *United States v. Moussaoui*, 382 F.3d 453, 465 (4th Cir. 2004). There, the court held that because the peti-

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[10] While the exception is commonly known as the "unknown custodian exception," it also encompasses the exception to the default "district of confinement" rule. *See Suri IV*, 2025 WL 1806692, at *4.

tioner's immediate custodian was unknown, it was proper to name "Secretary of Defense Donald Rumsfeld" as the ultimate custodian. *Id.* at 465. The Government ignores *Moussaoui*—binding circuit precedent—underscoring the weakness of its position. We refuse to indulge the Government's invitation to disregard both the Supreme Court's express recognition of the unknown custodian exception and our precedent applying it. It is firmly established, and "[t]his case is a prime example for why the unknown-custodian exception exists." *Suri IV*, 2025 WL 1806692, at *5.

As explained below, the exception applies here because both Suri's district of confinement and immediate custodian were unknown.

a. Suri's District of Confinement was Unknown

First, "it is impossible" to apply the district of confinement rule because Suri was "held in an undisclosed location." *Padilla*, 542 U.S. at 45 n.18. Immediately after Suri's arrest, he was rapidly moved to three locations in Virginia over eleven hours. J.A. 209-12. While officers allowed Suri to inform his wife of his first move from Chantilly to Farmville, Suri's requests to inform his wife about the subsequent transfers from Farmville to Richmond and Richmond to Louisiana were denied. *See* J.A. 136-37 ¶14 (requesting to call his wife in Farmville but "was refused"); *id.* ¶ 15 (requesting to call his wife in Richmond but "was denied"); *id.* ¶ 19 (explaining that when he requested to call his wife in Louisiana, officers told him to use a phone that required an access code, which they did not give him). At one point, even Suri did not know where he was going to be transferred. *Id.* ¶ 16 (noting that when he was on a van to Louisiana, "[n]o one would tell me where I was going, despite my repeated inquiries"). Further, ICE's online detainee tracker did not provide any location information for Suri until the day *after* the petition was filed. J.A. 36. And Suri's NTA offered no indication where he might be located, as it contained no reference to Louisiana. The only information available to Suri's counsel came from Saleh's last conversation with Suri, when Suri said he was being held in Farmville. J.A. 53. We agree with the district court that "it is not clear how any other diligent attorney could have known that [Suri] was in Louisiana at the time he filed the petition." *Suri II*, 785 F. Supp. 3d at 142. Based on the information known to Suri's counsel, the Eastern District of Virginia was the *only* logical place to file the petition.[11]

Such opaque and unpredictable conduct by the Government left Suri's counsel with no meaningful way to comply with the district of confinement rule. We hold

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[11] The Government insists that, under *Padilla*, what matters for the unknown custodian analysis are "the facts as they actually existed," or perhaps the facts known to the petitioner himself, rather than "the facts available to [the petitioner's] counsel at the time of filing." Opening Br. at 18 (internal quotation marks omitted). So as long as *someone* knew where Suri was, the government's logic goes, the exception does not apply. That claim is entirely unsupported by *Padilla*, whose analysis of the unknown custodian exception turned precisely on the *counsel*'s knowledge: The Court found the unknown custodian exception not to apply because, in the majority's view, Padilla's counsel in fact knew where Padilla was detained. *See* 542 U.S. at 449 nn.17, 18. As Judge Bork's opinion makes clear, what matters for this analysis is the ability of the "petitioner's attorneys . . . to file in the jurisdiction where petitioner is held." *Demjanjuk*, 784 F.2d at 1116. If a petitioner's attorneys do not know his location, Judge Bork commonsensically concluded, they "cannot be expected to file in the jurisdiction where petitioner is held." *Id*.

that these circumstances warrant the use of the exception to the default district of confinement rule.

b. Suri's Immediate Custodian was Unknown

Second, applying the immediate custodian rule is also "impossible" because Suri was held "by an unknown custodian." *Padilla*, 542 U.S. at 45 n.18. The habeas pleading statute expressly requires that a petitioner's custodian only be named "if known." 28 U.S.C. § 2242. Setting aside the fact that Suri's counsel could not have known Suri was in Louisiana when they filed the habeas petition, they also could not have known *who* to identify as Suri's immediate custodian. As a reminder, at 5:59 p.m., when Suri's petition was filed, he had recently landed in Louisiana from Richmond by plane, but had not yet been booked into the Alexandria Staging Facility. J.A. 36. It was not until 6:42 p.m.—43 minutes after his petition was filed—that Suri was booked into the Alexandria Staging Facility. J.A. 204. Accordingly, at 5:59 p.m., it is uncertain whether Suri even had an immediate custodian—that is, a warden or individual "with day-to-day control over" him. *Moussaoui*, 382 F.3d at 465. It is telling that the Government itself could not identify who Suri's "immediate custodian was while he was on a plane to Louisiana or while he was in Louisiana before he was booked" into the Alexandria Staging Facility. *Suri II*, 785 F. Supp. 3d at 142. Thus, we hold that the uncertainty surrounding Suri's immediate custodian places this case within the "limited and special circumstance[]" where it is proper to name an ultimate custodian, such as then-secretary of the Department of Homeland Security Kristi Noem. *Demjanjuk*, 784 F.2d at 1116; *see* Brian R. Means, Federal Habeas Manual § 1:93 (2025) ("[W]here the immediate custodian is unknown, the writ may be served on the prisoner's ultimate custodian.").

In sum, the unknown custodian exception is valid and squarely applies. Thus, we affirm the district court and hold that "[j]urisdiction is therefore proper in Suri's last-known location, and the only place his attorney reasonably could have filed a petition: the Eastern District of Virginia." *Suri IV*, 2025 WL 1806692, at *6.

3. Justice Kennedy's Exception

Given the district court's exceptional and uncontested factual findings of governmental secrecy and forum-shopping, we also hold that the exception borne out of Justice Kennedy's concurrence in *Padilla* applies.[12]

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[12] The application of Justice Kennedy's concurrence in *Padilla* is not novel. Its principles were recognized and applied by the First Circuit in *Vasquez v. Reno*, and by this court in *Suri IV*. *See* 233 F.3d 688, 696 (1st Cir. 2000) (holding that the default rules do not apply in the "extraordinary circumstance" where the government "spirited a[] [noncitizen] from one site to another in an attempt to manipulate jurisdiction"); *see also* 2025 WL 1806692, at *6 n.6 ("As an alternative basis for our conclusion, we adopt Justice Kennedy's reasoning from his concurrence in *Padilla*.").

Application of this exception also follows from the reasoning of *Padilla* itself. After all, six of the nine justices in *Padilla* were concerned about the risk of government efforts to "shroud [the petitioner's location] in secrecy" in order to evade jurisdiction. *Padilla*, 542 U.S. at 459 n.3 (Stevens, J., dissenting); *see id.* at 454 (Kennedy, J., concurring). The concurrence disagreed with the dissent only as to the factual predicate—whether the government had in fact "refused to tell Padilla's lawyer where he had been taken." *See id.* at 454 (Kennedy, J., concurring). Indeed, Justice Kennedy's concurrence made clear that, had the government refused to share Padilla's location with his counsel, or told his counsel but then moved him "so a filing could not catch up to the prisoner," Justices

In *Padilla*, Justice Kennedy wrote separately and acknowledged another exception where:

> [T]here is an indication that the Government's purpose in removing a prisoner were to make it difficult for his lawyer to know where the habeas petition should be filed, or where the Government was not forthcoming with respect to the identity of the custodian and the place of detention. In cases of that sort, habeas jurisdiction would be in the district court from whose territory the petitioner had been removed.

542 U.S. at 454 (Kennedy, J., concurring).

Justice Kennedy gave specific examples of when or how this exception may apply:

> In this case, if the Government had removed Padilla from the Southern District of New York but refused to tell his lawyer where he had been taken, the District Court would have had jurisdiction over the petition. Or, if the Government did inform the lawyer where a prisoner was being taken but kept moving him so a filing could not catch up to the prisoner, again, in my view, habeas jurisdiction would lie in the district or districts from which he had been removed.

Id.

His reasoning and provided examples proved strikingly predictive—prescient even—as it almost perfectly parallels the circumstances of Suri's arrest and detention. In the first 11 hours after Suri's arrest, he was

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Kennedy and O'Connor would have sided with the dissent and found jurisdiction. *See id.* Thus, far from mere "dicta," as the government tries to label it, Justice Kennedy's proposed exception was a decisive issue in the case.

moved to three different detention centers. While the district court noted a recent pattern of swift transfers of immigration detainees that filed First Amendment detention petitions, "such rapid transfers do not appear to be a part of the normal course of operations in this jurisdiction." *Suri II*, 785 F. Supp. 3d at 147; *see also id*. (quoting Virginia immigration attorney declaration stating that she has "never seen ICE arrest someone in Virginia and move them as far away as Texas in less than 24 hours"). Suri's counsel formally agreed to represent Suri, discussed the details of Suri's detention with Suri's wife, entered his appearance in the immigration proceedings, and filed a writ of habeas corpus in the district court, all within 21 hours of Suri's arrest. Remarkably, Suri's counsel expeditiously drafted and filed his habeas petition within three hours and 48 minutes of entering his notice of appearance in Suri's immigration proceedings, yet that was still too slow. *Id.* And because Suri was repeatedly denied the chance to update his wife or lawyer, and ICE's online detainee tracker offered no updates, we think that this would make it highly difficult (or impossible) for any diligent lawyer to "catch up" on their client's location. *Id.*

The district court also made several factual findings —which the Government does not dispute or challenge —that support the application of this exception. Those factual findings, which we hold are free from "clear error," *Velasco*, 370 F.3d at 398, were based in part on the Government's answers that were "either non-responsive or riddled with inconsistencies" and further support use of this exception. *Suri II*, 785 F. Supp. 3d at 145.

First, the district court found that the Government's "goal in moving [Suri] was to make it difficult for [Suri]'s counsel to file the petition and to transfer him to the Government's chosen forum." *Id.* at 146. The Government rationalized to the district court that it was actually "bedspace concerns" that motivated Suri's removal from Virginia. *Id.* at 145. Yet the Government concedes that Suri was transferred out of a facility with "some bedspace" to "a facility that did not have bedspace." *Id.* In Louisiana, Suri was not assigned to a bed in a dorm. J.A. 115. He slept in the "TV room"[13] on a plastic frame with a thin plastic mattress and no pillow. *Id.* And in Texas, Suri was "placed in a dormitory that ha[d] a 36-person capacity but ha[d] been filled with at least 50 people since he arrived," leaving Suri to sleep "on a plastic cot on the floor for two weeks before being moved to a bed." *Suri II*, 785 F. Supp. 3d at 145. If the Government were truly concerned about "potential overcrowding" and "bedspace," it would have kept Suri in Virginia. The factual findings here actually seem to be more severe than the circumstances Justice Kennedy contemplated in *Padilla*, as the Government rapidly and continuously moved Suri while denying his requests to inform his wife of his detention transfer developments.

Second, the district court found that the Government's "design was to forum shop and spirit [Suri] away from this District before his counsel could file a petition." *Id.* at 146. The district court asked the Government "whether it was normal for the NTA to list a detention facility as a non-citizen's current residence." *Id.* The Government responded that it did so "because the non-citizen's location determines the 'court and docket, as well as the date and time for initial appearances.'" *Id.*

[13] "The 'TV room' is a common room where the television is on every day from 5:00 a.m. to 2:00 a.m." J.A. 115.

(quoting Declaration of Mark Graham (D. ECF No. 57-1) at 4). Yet the record reflects that Suri was not located in Texas at the time he was served his NTA.[14] And because the Government "also knew that the Prairieland Detention Center was not [Suri's] most recent residence," the district court found that the Government sought to shop for a more favorable forum. *Id.* Notably, the Government "doesn't contest the district court's finding that it apparently intended to deport Suri on March 21." *Suri IV*, 2025 WL 1806692, at *5. "Without that order, Suri may well have been deported without the reasonable notice and opportunity for judicial review that 'all nine Justices agree[]' is due." *Id.* (quoting *A.A.R.P. v. Trump*, 605 U.S. 91, 95 (2025)). These undisputed factual findings demonstrate the Government's lack of candor regarding Suri's place of detention and its deliberate attempt to manipulate venue.

"[C]ommon-law habeas corpus was, above all, an adaptable remedy." *Boumediene*, 553 U.S. at 779. "Its pre-

[14] The district court reviewed the Government's supplemental declaration where it expressly stated that the "the decision to detain [Suri] was made *while he was at the Chantilly Field Office*, and that the NTA was issued after the detention facility was decided." *Suri II*, 785 F. Supp. 3d at 146 (emphasis added). But this directly contradicted the Government's later testimony that "the custody determination to detain [Suri] in Texas was made before the NTA was issued." *Id.* What's more, the Government's initial statement that the decision to detain Suri was made at the Chantilly Detention Center could not have been true. Suri was arrested at 9:30 p.m. Since his apartment was at least 30 minutes away and his NTA was signed at 9:47 p.m., the decision to detain him in Texas—which had nothing to do with bedspace—must have been made before he arrived at the Chantilly Detention Center. This inconsistency further supports the finding that the Government was not forthcoming with respect to its preferred ultimate place of detention for Suri.

cise application and scope changed depending upon the circumstances." *Id.* Drawing on the writ's flexible application, and the district court's thorough and uncontested factual findings, we adopt Justice Kennedy's exception in *Padilla* as another reason why habeas jurisdiction was proper where Suri was removed from—the Eastern District of Virginia. *Padilla*, 542 U.S. at 454 (Kennedy, J., concurring).

B. Transfer

The Government argues that even if the Eastern District of Virginia "initially" had jurisdiction, the district court "should have transferred the case once it became aware that Suri had been removed from the district before the filing of the habeas petition." Opening Br. at 37-38.

We review a district court's denial of a request to transfer to a new venue for abuse of discretion. *Nichols v. G.D. Searle & Co.*, 991 F.2d 1195, 1200 (4th Cir. 1993). We hold that the district court did not abuse its discretion by declining to transfer Suri's petition.

To begin, jurisdiction in the habeas statute does not refer to a district court's subject matter jurisdiction. *See Padilla*, 542 U.S. at 434 n.7. Rather, it is better "understood as a question of personal jurisdiction or venue." *Id.* at 451 (Kennedy, J., concurring); *see also Kanai v. McHugh*, 638 F.3d 251, 257-58 (4th Cir. 2011) (same). This distinction matters because a lack of subject matter jurisdiction typically requires dismissal, while issues of personal jurisdiction or venue are subject to waiver and may, at a district court's discretion, be addressed through transfer.

Here, there are only three places where this case could arguably be heard: Virginia, Louisiana, or Texas. The Government thinks this case should be heard in Louisiana or Texas. Opening Br. at 24. But interestingly, it does not commit to a position on whether the transfer should have occurred to Louisiana or Texas. *See id.* at 37-41. Suri thinks that this case is properly heard in Virginia.

We think this decision can be made through simple process of elimination. First, Louisiana is out because the Government never sought transfer to Louisiana in the district court. *See Berg v. Kingdom of the Neth.*, 24 F.4th 987, 998 (4th Cir. 2022) (holding that the appellant's transfer request to the District of Columbia was forfeited because he failed to request the district court to transfer his case to the District of Columbia in the first instance); *see also Kanai*, 638 F.3d at 258 (similar). We can't hold that the district court abused its discretion in failing to transfer the case to Louisiana when it was never asked to transfer the case to Louisiana. *Suri II*, 785 F. Supp. 3d at 140 (noting that "neither party contends that the Western District of Louisiana is the proper jurisdiction to hear the petition"). And second, any argument for Texas is unavailing, as there is no reason to think—and the Government points to no case indicating—that a habeas petition challenging present confinement could be filed in a district to which a petitioner had not yet been. *See* 28 U.S.C. § 1406(a) (allowing transfer to a district where the case "could have been brought"); *id.* § 1631 (same). It is undisputed that Suri's habeas petition was filed three days before he was moved to Texas.

Accordingly, we cannot say that the district court abused its discretion in refusing to transfer Suri's habeas petition out of Virginia. Frankly, Virginia is the only plausible and reasonable venue. The district court astutely looked to the Supreme Court's reasoning in *Braden v. 30th Jud. Circuit Court of Kentucky*, where it applied "traditional venue considerations" when the default habeas rules "became untenable." *Suri II*, 785 F. Supp. 3d at 148-49 (citing 410 U.S. 484, 493-94, 499 (1973) (weighing where "the relevant events occurred" and whether it would be "no less convenient for the respondent and the Commonwealth of Kentucky" to litigate the petitioner's claims in Kentucky)). In applying those traditional venue considerations, the district court found that the Eastern District of Virginia would be the most suitable venue for four distinct reasons. First, because the Eastern District of Virginia was the jurisdiction in which Suri "resides, was arrested, and was originally detained." *Id.* at 148. Next, it recognized that forcing Suri to litigate in Louisiana or Texas, "many states away from his lawyers and family, would meaningfully deprive him of their ability to aid in his representation for the duration of these habeas proceedings." *Id.* Third, there was "no prejudice" for the Government "to litigate in the Eastern District of Virginia." *Id.* at 149. And finally, the district court found that Suri "ha[d] strong connections to this District" whereas to Texas and Louisiana, he "d[id] not," *id.* at 148-49. All those considerations squarely support the district court's refusal to transfer the case from the Eastern District of Virginia.

The Government provides two arguments in response to the district court's application of traditional venue considerations.

First, the Government cites three recent out-of-circuit district court cases to assert that "other courts faced with situations similar to Suri's have concluded that transfer would be appropriate." Opening Br. at 38. But those decisions support—rather than undermine—that the district court acted within its discretion by keeping this case in the Eastern District of Virginia.

We start with *Öztürk v. Trump*, 777 F. Supp. 3d 26 (D. Mass. 2025), and *Khalil v. Joyce*, 771 F. Supp. 3d 268 (S.D.N.Y. 2025). As here, the *Öztürk* and *Khalil* petitioners were rapidly moved from detention center to detention center, with Louisiana as the government's target jurisdiction. *Öztürk*, 777 F. Supp. 3d at 30-32; *Khalil*, 771 F. Supp. 3d at 275-77. But a fundamental difference in *Öztürk* and *Khalil* from this case is that the petitioners in both cases consented to transfer, *requesting* their petitions be transferred to neighboring states. *Öztürk*, 777 F. Supp. 3d at 33, 43 (requesting to be transferred from Massachusetts to Vermont); *Khalil*, 771 F. Supp. 3d at 286-87 (requesting to be transferred from New York to New Jersey). And in both cases, the district courts *denied* the government's requests to transfer the cases across the country to Louisiana and *granted* the petitioners' requests to transfer to a neighboring state. *Öztürk*, 777 F. Supp. 3d at 43; *Khalil*, 771 F. Supp. 3d at 287. What's more, the district court in *Khalil* expressly found that forcing the petitioner to litigate in Louisiana would be prejudicial, as it would mean "litigating far from his lawyers, from his eight-months-pregnant wife, and from the location where most (if not all) of the events relevant to his petition took place." 771 F. Supp. 3d at 287. So despite the Government's contention that these cases support discretionary transfer, these cases in fact support Virginia as the appropriate venue here. The reasoning in *Öztürk* and *Khalil* mirror the district court's reasoning as to why transferring Suri's case across the country would be unjust. *See Suri II*, 785 F. Supp. 3d at 149.

Additionally, Suri's petition was filed *before* he was booked into the Alexandria Staging Facility in Louisiana, unlike in *Öztürk* and *Khalil* where their petitions were filed *after* the petitioners were undisputably already booked in the neighboring states' detention center. 777 F. Supp. 3d at 43 (finding that "Ozturk was confined overnight in Vermont when the Petition was filed [in Massachusetts]"); 771 F. Supp. 3d at 276-77 (finding that Khalil was already booked in New Jersey when his petition was filed in New York).

The Government also relies on *Dvortsin v. Noem*, 2025 WL 1751968 (D. Colo. June 12, 2025), but that case is equally unavailing. In *Dvortsin*, the government sought to transfer a habeas petition filed by a Colorado family from Colorado to Texas. *Id.* at *3. There, the district court applied the default habeas rules because it found that both the unknown custodian exception and the exception out of Justice Kennedy's concurrence in *Padilla* did not apply. *See id.* at *4-5. The district court reasoned that there was no evidence of concealment, as the detainee "likely had multiple telephone calls" after arriving at the Texas facility; the Texas facility was apparently designed to house families; and the family was only "moved once, to Texas." *Id.* at *5. And importantly, the district court found that transferring the case to Texas would be at "the convenience of [the] parties and witnesses." *Id.* at *6. Here, the factual findings were starkly different, as the district court found that it would be in the interest of justice for Suri's case to be heard in

Virginia, Suri was moved to multiple detention centers, he was not allowed to contact his wife or attorney for most of the moves, and the Government's purpose in moving Suri "was to forum shop and spirit [him] away from this District before his counsel could file a petition." *Suri II*, 785 F. Supp. 3d at 146.

Second, the Government clings to dicta in Judge Bork's in chambers opinion in *Demjanjuk*, where he wrote that if it becomes "known that petitioner is held in a jurisdiction other than this one, a judge of this circuit would be divested of jurisdiction." 784 F.2d at 1116. At the outset, the Supreme Court in *Padilla* only endorsed the unknown custodian exception from *Demjanjuk*, not the entirety of the opinion. *See* 542 U.S. at 450 n.18. And *Demjanjuk*'s brief statement in dicta contains no analysis or support. If we were to follow it, it would conflict with the Supreme Court's holding in *Ex Parte Endo*, which stands for the proposition that "when the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release." *Padilla*, 542 U.S. at 441. *Endo* also held that the "objective" of habeas relief "may be in no way impaired or defeated by the removal of the prisoner . . . from the district since the suit was begun." 323 U.S. 283, 307 (1944). Under the unknown custodian exception, Suri's petition was properly filed in the Eastern District of Virginia; the Government's behavior that would potentially strip the original district court of jurisdiction conflicts with the motivation for *Endo*'s rule.

The Government states that *Endo*'s rule does not apply here, "where [Suri]'s counsel *knew* that [he] was not detained in the Eastern District [of Virginia] *before* filing the habeas petition." Reply Br. (ECF No. 88) at 14. But this is plainly wrong and a misrepresentation of the facts. As the district court found, Suri was taken to an airport in Richmond, Virginia "[u]nbeknownst to anyone" and placed on a flight that departed to Louisiana. *Suri II*, 785 F. Supp. 3d at 136. Meanwhile, Suri's counsel was working diligently to file Suri's habeas petition that day, relying on Saleh's statement that Suri was being held at the Farmville Detention Center. *Id.* at 135-36.

Accordingly, we hold that the district court did not abuse its discretion by declining to transfer Suri's habeas petition.

C. Jurisdiction-Stripping Statutes

Next, the Government asserts that "[e]ven if the district court had jurisdiction over Suri's habeas petition," three provisions of the INA—8 U.S.C. §§ 1252(g), 1252(b)(9), and 1252(a)(5)—"separately stripped the district [court] of jurisdiction to order relief." Opening Br. at 41. We disagree and hold that none of the pertinent INA provisions deprive the district court of habeas jurisdiction.

We review "the district court's factual findings with respect to jurisdiction for clear error and the legal conclusion that flows therefrom de novo." *Velasco*, 370 F.3d at 398.

Before addressing each statutory provision, some background is necessary to understand the interplay between the INA provisions and judicial review here. The

Supreme Court has required both a "'clear statement of congressional intent to repeal habeas jurisdiction'" and a "'clear indication' of congressional intent . . . when a proposed [statutory] interpretation would push 'the outer limits of Congress' power.'" *DHS v. Thuraissigiam*, 591 U.S. 103, 137 (2020) (quoting *St. Cyr*, 533 U.S. at 298-300). There is a "'strong presumption in favor of judicial review of administrative action,'" *id.*, and the Supreme Court instructs that we should interpret "'statutes [to] allow judicial review . . . absent [a] clear statement." *Kucana v. Holder*, 558 U.S. 233, 237 (2010) (first alteration in original & citation omitted). That "presumption can only be overcome by 'clear and convincing evidence' of congressional intent to preclude judicial review." *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020) (quoting *Reno v. Cath. Social Servs., Inc.*, 509 U.S. 43, 64 (1993)). As explained below, there is "no indication at all that Congress intended to strip district courts of jurisdiction over habeas challenges to unconstitutional immigration detention." *Suri IV*, 2025 WL 1806692, at *7. In fact, Congress' intent here aligns with the strong presumption favoring judicial review. Congress expressly confirmed that there would be no "preclu[sion of] habeas review over challenges to detention that are independent of challenges to removal orders." H.R. Rep. No. 109-72, at 175 (2005) (Conf. Rep.). Rather than broadly foreclosing review, Congress intended that any "eliminat[ion of] habeas review [would] only [be] over challenges to removal orders." *Id.*

It comes as no surprise, then, that each and every time the Government has tried to invoke these *removal*-focused jurisdiction-stripping provisions to foreclose challenges to immigration *detention*, the Supreme Court has balked. *See, e.g.*, *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001); *Clark v. Martinez*, 543 U.S. 371 (2005); *Jennings v. Rodriguez*, 583 U.S. 281, 292-295 (2018) (plurality); *id.* at 355 (Breyer, J., dissenting); *Nielsen v. Preap*, 586 U.S. 392, 401-02 (2019); *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021); *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022). This unbroken line of caselaw also accords with common sense: if a noncitizen is challenging their detention pending removal, then waiting for their removal proceedings does them no good. They have already been detained, allegedly in violation of the Constitution. This "absurd" reading of the INA would make such detention claims "effectively unreviewable," and the Supreme Court has repeatedly refused to embrace it. *Jennings*, 583 U.S. at 293 (plurality).

With the presumption in favor of judicial review, Congress' intent, and Supreme Court precedent in mind, we address each INA provision in turn.

1. 8 U.S.C. § 1252(g)

The Government first points to § 1252(g), which provides that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any [noncitizen] *arising from* the decision or action by the Attorney General to [(1)] commence proceedings, [(2)] adjudicate cases, or [(3)] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g) (emphasis added).

The Supreme Court has held that § 1252(g) is a "narrow[]" bar on judicial review that is cabined "to three discrete actions": a decision "to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm. (AADC)*, 525 U.S. 471, 482 (1999) (quoting 8 U.S.C. § 1252(g)). Section 1252(g) is "directed against a particular evil: attempts to impose judicial restraints upon prosecutorial discretion." *AADC*, 525 U.S. at 485 n.9. Since *AADC*, the Supreme Court has reaffirmed § 1252(g)'s narrow ambit, expressly "reject[ing] as 'implausible'" any interpretation of § 1252(g)'s "arising from" language that would "cover[] 'all claims arising from deportation proceedings' or impose[] 'a general jurisdictional limitation.'" *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020) (quoting *AADC*, 525 U.S. at 482). Instead, the "arising from" language should be read "to refer to just those three specific actions themselves." *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (citing *AADC*, 525 U.S. at 482-83).

The § 1252(g) action at issue here is the decision to "commence proceedings" against a noncitizen. The Government contends that Suri, by challenging his initial detention, is also challenging "the Attorney General's decision to commence removal proceedings against him." Opening Br. at 45. In other words, it views Suri's unlawful detention claims as "inextricably intertwined" with—and thus arising from—"the decision to commence removal proceedings." *Id.* at 45, 47.

We disagree for two main reasons. First, Suri's habeas claims challenging his detention are legally separate from the Government's decision to begin removal proceedings against him. And second, § 1252(g) cannot be read to reach claims that are wholly independent of the removal process.

a. Suri's Detention Challenge is Legally Separate from the Government's Decision to Commence Removal Proceedings

At the outset, Suri's habeas petition does not challenge the Government's decision to commence removal proceedings against him. *See* J.A. 10-25; 97-129.[15] As noted above, his petition alleges that the decision to *detain* him and the conditions of his detention —as distinct from the decision to seek removal—were made in order to retaliate against him for First-Amendment protected activities and associations and to chill his speech and that of others. Suri, in other words, challenges his detention and the policy that produced that detention. *See id.* And further, the district court's order granting Suri's release on bond specifically requires Suri to "participate in his removal proceedings" as a condition of his release. *Suri III*, 2025 WL 1392143, at *1 (E.D. Va. May 14, 2025).

This distinction of *what* Suri is challenging matters, because challenges to detention proceedings do not fall within the "particular evil" § 1252(g) narrowly targets—namely, the attorney general's decision to commence removal proceedings. *AADC*, 525 U.S. at 485 n.9. Section 1252(g) notably "does not speak to detention *at all*." *Öztürk v. Hyde*, 155 F.4th 187, 208 (2d Cir. 2025) (Nathan, J., concurring with five judges in denial of en banc review).

Section 1252(g) does not speak to detention because the decision to detain a noncitizen and the decision to remove one are legally separate. Removal proceedings are commenced by the filing of an NTA with an immigration court. *See* 8 C.F.R. § 1239.1. The decision to detain is not commenced with the filing of an NTA, and

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[15] Suri's original petition separately sought to enjoin his "targeting . . . for removal," J.A. 25, but his amended petition (the one the district court preliminarily granted below) challenged only his "targeting . . . for apprehension, detention, and transfer," not removal. J.A. 128-29.

may occur before or after the filing of an NTA. It follows that detention is not a necessary predicate to or consequence of the government's decision to commence removal proceedings against a noncitizen. *See Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (holding that a habeas petition "concern[ing] detention while the administrative process lasts . . . may be resolved without affecting pending [removal] proceedings"). Importantly, the Government was not legally required to detain Suri to adjudicate his case.[16] Indeed, the government routinely initiates removal proceedings against individuals without detaining them. *See, e.g.*, Brief for Petitioners at *8-9, *United States v. Texas*, 2022 WL 4278395 (Sep. 12, 2022) (No. 22-58) (noting that "perennial constraints on detention capacity" prevent the Executive from detaining everyone subject to removal).

The INA's statutory framework further supports that the Government's decision to detain and its decision

[16] At oral argument, the Government represented to this court that Suri's "detention is mandatory under the foreign policy charge." Oral Argument at 00:25:58-00:26:01, *Badar Suri v. Donald Trump*, No. 25-1560 (4th Cir. argued Mar. 17, 2026), https://www.ca4.uscourts.gov/OAarchive/mp3/25-1560-20260317.mp3. We asked the Government if it was "sure of that," *id.* at 00:26:03, to which it responded that it was "80% sure" Suri's detention was mandatory, *id.* at 00:26:07. As it turns out, Suri's detention was *not* mandatory but permissive, as the Government later conceded in a 28(j) letter that the statutory source for Suri's detention was 8 U.S.C. § 1226(a). *See* ECF No. 126 at 1; *see also id.* § 1226(a) (providing that a noncitizen "*may* be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States." (emphasis added)). We caution that representations to this court—particularly representations on matters as significant as whether Suri's detention was mandatory—must be correct, not "80% sure" or what counsel believes might be correct.

to remove are legally distinct. The INA treats detention and removability as separate, each governed by different provisions and justified on different grounds. *Compare* 8 U.S.C. § 1226 (detention statute) *with* 8 U.S.C. § 1227 (removability statute).

Courts also "routinely exercise jurisdiction over such [detention] challenges." *Suri IV*, 2025 WL 1806692, at *7 (citing *Castaneda v. Perry*, 95 F.4th 750, 762 (4th Cir. 2024) (exercising jurisdiction over a habeas challenge to present immigration confinement)); *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023) (holding that "§ 1252(g)'s jurisdictional bar for claims 'arising from' the government's decision to "execute removal orders" does not preclude jurisdiction over Kong's challenges to the legality of his detention"); *Madu v. Att'y Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006) (holding that Madu brought a constitutional detention challenge and did not challenge the government's exercise of discretion); *Parra*, 172 F.3d at 957 (holding that Parra's claims concerned detention and that he did not request the district court to block one of the three governmental actions set out in § 1252(g)). Recently, the Second Circuit (twice) and this court in *Suri IV* rejected the government's argument that § 1252(g) precluded a district court's jurisdiction. The Second Circuit specifically held that § 1252(g) did not strip the district court of jurisdiction because the habeas petitioner's "claims of unlawful and retaliatory detention [were] independent of, and collateral to, the removal process," so the petitioner's "detention [did] not arise from the government's 'commence[ment] [of] proceedings.'" *Öztürk v. Hyde*, 136 F.4th 382, 397-98 (2d Cir. 2025)); *see also Mahdawi v. Trump*, 136 F.4th 443, 449-51 (2d Cir. 2025) (same).

Accordingly, detention challenges lie outside § 1252(g)'s three narrow limits on judicial review.

The Government's insistence that *AADC* changes this outcome is misplaced. The Government claims that *AADC* is persuasive because "the Supreme Court held that a previous version of § 1252(g) precluded jurisdiction over claims similar to Suri's." *See* Opening Br. at 43 (citing 525 U.S. at 474, 487-92). We are unpersuaded for a couple of reasons.

In *AADC*, the Supreme Court held that because the respondents challenged "the Attorney General's decision to 'commence proceedings,'" Section 1252(g) "deprive[d] the federal courts of jurisdiction over respondents' claims." *Id.* at 486, 492. The Government correctly points out some similarities between *AADC* and this case, such as the *AADC* respondents' allegations that the government "was selectively enforcing immigration laws against them in violation of their First and Fifth Amendment rights." *Id.* at 474. That said, the Government fails to note a key difference: the *AADC* petitioners sought "to prevent the initiation of deportation proceedings," *id.* at 474,—i.e., the "commence[ment] [of removal] proceedings," *id.* at 482. And further, the *AADC* petitioners' habeas claims were not like Suri's because they "did not sound in unlawful detention at all"—another reason why *AADC* is "of no help to the [G]overnment." *Suri IV*, 2025 WL 1806692, at *8 (quoting *Öztürk*, 136 F.4th at 398).[17]

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[17] Nor do we find the Government's use of *Gupta v. McGahey*, 709 F.3d 1062 (11th Cir. 2013) or *Alvarez v. U.S. ICE*, 818 F.3d 1194 (11th Cir. 2016) persuasive. The Eleventh Circuit in *Gupta* held that § 1252(g) barred the plaintiff from bringing certain claims under

b. Section 1252(g) Does Not Reach Suri's Detention Claims

The Government urges us to take a broad reading of § 1252(g), contending that Suri's detention claims "arise from" the decision to commence removal proceedings because resolving Suri's unlawful detention claims on free speech retaliation grounds "may [also] be determina-

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Bivens because the challenged "actions were taken in an effort to secure Gupta and prevent potential danger to Disney World while he awaited a determination of his removal." 709 F.3d at 1065. And in *Alvarez*, the Eleventh Circuit held that while § 1252(g) did not strip the court of jurisdiction, the plaintiff lacked an available remedy under *Bivens*. 818 F.3d at 1205, 1212-13. As a preliminary matter, *Alvarez*'s holding seems to cut against the Government. *See id.* at 1204-05. Further, both cases are appeals of *Bivens* actions, where ICE officials were sued after the plaintiffs were released from detention, rather than here, where Suri filed a habeas petition for current unlawful detention. *Gupta*, 709 F.3d at 1063–64; *Alvarez*, 818 F.3d at 1195–96. Neither decision demonstrates that § 1252(g) divests the district court of jurisdiction to adjudicate Suri's habeas detention challenge.

To the extent *Gupta* or *Alvarez* could be read to foreclose habeas review of unlawful immigration detention, that reading cannot be reconciled with *AADC*'s narrow construction of § 1252(g)'s "arising from" language, 525 U.S. at 482, or *Jennings*' reaffirmation that § 1252(g) targets only the three discrete acts. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) ("[W]e read the language [in § 1252(g)] to refer to just those three specific actions themselves." (citing *AADC*, 525 U.S. at 482-83)). Courts have accordingly either confined *Alvarez* and *Gupta* to their facts or refused to follow them outright as they run headlong into Supreme Court precedent. *Gonzalez Cortes v. Holt*, 2025 WL 4666433, at *5 n.6 (W.D. Okla. Nov. 5, 2025) (collecting cases); *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1144 (D. Minn. 2025); *Rivero v. Mina*, 817 F. Supp. 3d 1278, 1283 (M.D. Fla. 2026); *Villa v. Normand*, 2025 WL 3188406, at *4-5 (S.D. Ga. Nov. 14, 2025).

tive" in Suri's removability proceedings. *See* Opening Br. at 52-53.

"But overlap, *even substantial substantive overlap*, does not make one claim arise out of the other, or necessitate that one claim controls the outcome of the other." *Öztürk*, 136 F.4th at 400 (emphasis added). And regardless, the Government has yet to "point[] to a single case holding that § 1252(g) strips jurisdiction over" a First Amendment retaliation challenge to unlawful detention. *Suri IV*, 2025 WL 1806692, at *8. We are persuaded by the Second Circuit's conclusion in *Öztürk*'s that "jurisdiction will turn" not on the legal basis of the claim, but instead "on the substance of the relief that a plaintiff is seeking," i.e., relief from detention versus relief from removal. 136 F.4th at 400 (quoting *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011)) (addressing a similar argument as to review under 1252(b)(9)). *Öztürk*'s explanation of this distinction makes practical sense. While removal challenges "can be heard in a petition for review after an order of removal has been entered by an immigration judge and affirmed by the Board of Immigration Appeals," *id.*, constitutional challenges (like the ones raised by Suri) have no place and cannot be heard in removal proceedings. *See Matter of C-*, 20 I. & N. Dec. 529, 532 (BIA 1992) (noting that "it is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations").

What's more, Suri raises due process challenges to his detention—claims that are wholly independent of his First Amendment retaliation claim. *See* J.A. 123-27; *see also Mahdawi*, 136 F.4th at 450 n.3 (holding that "[s]o long as part of his challenge to his detention falls outside of § 1252(g), his petition survives, as does the district court's authority to order his release"). Accepting the Government's position would mean that, by simply asserting a First Amendment retaliation claim in his removal proceedings, § 1252(g) would foreclose Suri from bringing: (1) any related detention claims, including his First Amendment retaliation detention claim, as well as (2) any independent claims such as his due process claims or challenges to the conditions or duration of his present confinement. In other words, if a petitioner files a habeas petition that includes multiple detention claims and just *one* of those claims has some substantive overlap with his separate ongoing removal proceedings, his entire detention petition would be barred by § 1252(g). That result would be "staggering," *Jennings*, 583 U.S. at 293, and would "eviscerate habeas corpus for noncitizens whenever the government detains them and also seeks to remove them," *Öztürk*, 155 F.4th at 208 (Nathan, J., concurring in denial of en banc). Any potential risk of "systemic damage" "from allowing parallel adjudications," *Suri IV*, 2025 WL 1806692, at *12 (Wilkinson, J., dissenting), is far outweighed by the deprivation of liberties held by all who reside in the United States.[18]

[18] The dissent further contends that our holding today has created a "loophole" for parallel proceedings, which would require the government to litigate a noncitizen's removability in two forums. Diss. Op. at 84, 85. But that is not true. Under § 1252(g), regardless of whether there is an order of removal, jurisdiction would be stripped if a petitioner, explicitly or in substance, challenged the government's decision to commence removal proceedings. That provision thus forecloses the "conclusory" detention challenges that the dissent fears: the argument that the noncitizen "cannot be detained pending removal *because* [he] cannot be removed." *Id.* (internal quotation marks omitted). Suri's detention challenge does not fit that mold.

Time and time again, the Supreme Court has stressed that § 1252(g) is a "narrow" bar to judicial review on three very specific actions. *Regents*, 591 U.S. at 19; *see also Jennings*, 583 U.S. at 294 (citing AADC, 525 U.S. at 482-83). Yet the Government asks us to wave away explicit Supreme Court commands by giving one of § 1252(g)'s discrete actions a new broad and unnatural reading. We refuse to do so.

2. 8 U.S.C. § 1252(b)(9)

We turn next to 8 U.S.C. § 1252(b)(9), which provides that, "[j]udicial review of all questions of law and fact . . . arising from any action taken or proceeding brought to remove [a noncitizen] . . . shall be available only in judicial review of a final order." But § 1252(b)(9) cannot be read in isolation. Section 1252(b)(9) is a subsection within § 1252(b), which is titled "Requirements for review of orders of removal." *Id.* § 1252(b). Section 1252(b) sets out that the "following requirements apply" "[w]ith respect to review of an order of removal under subsection (a)(1)." *Id.* § 1252(b). So, the provisions that follow § 1252(b)—§ 1252(b)(1) through (9)—are requirements that apply only to the review of an order of removal.

Here, Suri is not seeking judicial review of an order of removal. Thus, § 1252(b)(9) (or any of § 1252(b)'s subsections) does not apply. *See Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) (determining a statute's meaning requires reviewing "the specific context in which that language is used, and *the broader context of the*

As we have explained, he brings challenges to the Government's decision to detain him, and the conditions of his detention, that are independent of and do not turn on the decision to commence removal proceedings against him.

statute as a whole" (emphasis added)). This straightforward reading is well established, as this court has twice held that § 1252(b)(9) applies only with respect to review of an order of removal. In *Casa De Maryland v. United States Department of Homeland Security*, this court held that § 1252(b)(9) "doesn't help the government . . . because it 'applies *only* with respect to review of an *order of removal* under [8 U.S.C. § 1252(a)(1)].'" 924 F.3d 684, 697 (4th Cir. 2019) (alteration in original).[19] And in *Miranda v. Garland*, the court again held that § 1252(b)(9) does not preclude jurisdiction over a challenge to the legality of detention and bond procedures. 34 F.4th 338,

[19] The dissent contends that our precedent in *Casa de Maryland* does not, in fact, confine § 1252(b)(9) to review of final orders of removal. Instead, it argues that *Casa de Maryland* holds only that § 1252(b)(9) does not apply when the government has not even commenced removal proceedings against the plaintiff. Diss. Op. at 75. We read *Casa de Maryland* differently. There, the government insisted that § 1252(b)(9) barred review of the administration's decision rescinding the Deferred Action for Childhood Arrivals program not because it thought removal proceedings had commenced, but because the Executive's decision to defer action on a removal is a "question[] of law or fact arising from any action taken to remove a[] [noncitizen]" that could be brought, if anywhere, only in the petition-for-review process. United States Opening and Response Br., *Casa de Maryland v. DHS*, No. 18-1521(L) (4th Cir. Aug. 1, 2018), ECF No. 33, at 28-30. Under the dissent's reading of the statute—like the government's there—review in that case would thus have been "with respect to review of an order of removal," 8 U.S.C. § 1252(b)(9), whether or not removal proceedings had commenced, because it necessarily "relat[ed] to" such a (potential) order. Diss. Op. at 73-74. But *Casa de Maryland* rejected that expansive reading of the statute. And it did so, by its terms, not based on whether removal proceedings had commenced—which would not have resolved the dispute as the government presented it, or as anyone in that case or this one construes the statute—but rather whether there was an actual "order of removal" at issue. *Casa de Maryland*, 924 F.3d at 687.

353 n.6 (4th Cir. 2022). Multiple circuit courts have also read § 1252(b)(9) to only apply when an order of removal is at issue[20], as have more recent decisions addressing challenges analogous to the one[21]. This alone could end our § 1252(b)(9) analysis.

Taking a different tack, our dissenting colleague argues that the legislative history alters the text's apparent plain meaning. Diss. Op. at 65-67. While we appreciate the dissent's reliance on legislative history, we disagree with the dissent's reading and its ability to overcome the force of the statutory text and our precedent. Quoting from a House Conference Report, the dissent rightly notes that Congress amended 8 U.S.C. § 1252(b)(9) in the REAL ID Act of 2005 to overturn the main holding in *Immigration & Naturalization Services v. St. Cyr*, 533 U.S. 289 (2001). But that fact does little to aid the dissent's argument, because Congress' essential problem with *St. Cyr* was that it allowed a district court, sitting in habeas, to review certain noncitizens' final orders of removal issued by the BIA. H.R. Rep. No. 109-72, at 173 (2005); *see St. Cyr*, 533 U.S. at 311-13. And what

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[20] *See Nadarajah v. Gonzales*, 443 F.3d 1069, 1075 (9th Cir. 2006) (holding that "[b]y its terms, [§ 1252(b)(9)] does not apply to federal habeas corpus petitions that do not involve final orders of removal"); *Singh v. Gonzalez*, 499 F.3d 969, 978 (9th Cir. 2007) (explaining that "[b]y virtue of their explicit language, both §§ 1252(a)(5) and 1252(b)(9) apply only to those claims seeking judicial review of orders of removal"); *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1367 (11th Cir. 2006) (holding that § 1252(b)(9) does not apply to cases that do not "involve review of an order of removal").

[21] *See Suri IV*, 2025 WL 1806692, at *9 ("There is no such order here, so these provisions don't apply."); *Öztürk v. Hyde*, 136 F.4th 382, 399 (2d Cir. 2025) (rejecting the government's argument because "[n]o such order of removal is at issue here"); *Mahdawi*, 136 F.4th 443, 451-52 (2d Cir. 2025) (same).

Congress did in response was to make clearer that such orders of removal may not be reviewed in habeas proceedings. *See* REAL ID Act of 2005, Pub. L. 109-13, 119 Stat. 231, 311 (2005). To be sure, the Conference Report also discussed concerns with review of issues that arise in removal proceedings, even before a final order of removal issues. But it did *nothing* in the REAL ID Act to address that issue. Quite to the contrary, the Conference Report makes crystal clear that its revisions were intended "to eliminate habeas review *only over challenges to removal orders*," and not to "preclude habeas review over challenges to detention that are independent of challenges to removal orders." H.R. Rep. No. 109-72, at 175 (emphasis added). That legislative history cannot remotely bear the weight our dissenting colleague asks it to. In fact, it supports Suri's reading of the text.

The Government contends that *Jennings v. Rodriguez*, 583 U.S. 281 (2018) and *Khalil v. President, U.S.*, 164 F.4th 259 (3d Cir. 2026), alter the plain reading of § 1252(b)(9) adopted by this court and many others. We disagree.

a. *Jennings v. Rodriguez*, 583 U.S. 281 (2018)

In *Jennings*, noncitizens in ongoing removal proceedings brought habeas corpus petitions that challenged the length of their detention. 583 U.S. at 290-91. There, six Justices agreed that § 1252(b)(9) did not strip federal courts of jurisdiction over the habeas petitions. *Id.* at 294-95 (Alito, J., plurality opinion, joined by Chief Justice Roberts and Justice Kennedy) ("Under these circumstances § 1252(b)(9) does not present a jurisdictional bar."); *id.* at 355 (Breyer, J., dissenting opinion, joined by Justice Ginsburg and Justice Sotomayor) ("Jurisdiction also is unaffected by 8 U.S.C. § 1252(b)(9).”). Those Justices did not agree on the exact scope of § 1252(b)(9) —just that § 1252(b)(9) did not strip jurisdiction over the *Jennings* detainees’ habeas petitions.

In times where the Supreme Court cannot agree on a single rationale for a decision, courts must engage in a *Marks* analysis. *See Marks v. United States*, 430 U.S. 188, 193 (1977). *Marks* provides that the holding of a divided Supreme Court “may be viewed as that position taken by those Members who concurred in the judgment[] on the narrowest grounds.” *Id.* (cleaned up). “This analysis must account for any dissenting opinions that were necessary to the holding with respect to a given legal question.” *Khalil*, 164 F.4th at 283 (Freeman, J., dissenting) (citing *United States v. Jacobsen*, 466 U.S. 109, 116-17 & n.12 (1984)). Much of the disagreement on § 1252(b)(9) stems from what *Jennings* actually holds—and in turn, *when* § 1252(b)(9) is understood to strip jurisdiction. Below, we apply *Marks* to identify the narrowest grounds of *Jennings*’ jurisdictional implications.

The relevant portion of the *Jennings*’ plurality opinion is Part II (583 U.S. at 292-95), where Justice Alito discusses whether the Court had “jurisdiction to entertain respondents’ claims” under § 1252(b)(9), *id.* at 292. Justice Alito held that § 1252(b)(9) did “not present a jurisdictional bar,” but found it “not necessary . . . to attempt to provide a comprehensive interpretation” of § 1252(b)(9). *Id.* at 294-95. Instead, Justice Alito made a case-specific decision, writing that:

> For present purposes, it is enough to note that respondents are not asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal; and they

> are not even challenging any part of the process by which their removability will be determined. Under these circumstances, § 1252(b)(9) does not present a jurisdictional bar.

Id. at 294-95.

Justice Breyer, writing separately, agreed with Justice Alito that jurisdiction was unaffected by § 1252(b)(9). To Justice Breyer, § 1252(b)(9) would have no effect outside of challenges to orders of removal. *Jennings*, 583 U.S. at 355 (Breyer, J., dissenting). Justice Thomas, however, disagreed with Justice Alito and Justice Breyer's opinions on § 1252(b)(9). In his view, because "a majority of the Court ha[d] decided to exercise jurisdiction," the judgment "should have [been] vacated" "[b]ecause § 1252(b)(9) deprives courts of jurisdiction." *Id.* at 326 (Thomas, J., concurring in part, joined by Justice Gorsuch).

Thus, a majority agreed that § 1252(b)(9) did not strip jurisdiction over the *Jennings* detainees' habeas petitions. While Justice Alito found it unnecessary to comprehensively interpret § 1252(b)(9), whereas Justice Breyer did, together, their opinions garnered a majority that concluded § 1252(b)(9) did not "present a jurisdictional bar." *Id.* at 295 (Alito, J., plurality opinion); *see also id.* at 355 (Breyer, J., dissenting in part).

Having identified the "position taken by those Members who concurred in the [§ 1252(b)(9)] judgment," we turn to determining the "narrowest grounds" as required by *Marks*. 430 U.S. at 193. Considering both Justice Alito and Justice Breyer's opinions, Justice Alito's opinion is the narrower holding under *Marks* because it adopts a case-specific application of § 1252(b)(9), rather than adopting an exact interpretation.

So contrary to the Government's contention, the *Marks* holding in *Jennings* does not abrogate or overrule our precedent interpreting § 1252(b)(9) because it deliberately declined to "provide a comprehensive interpretation [of § 1252(b)(9)]." 583 U.S. at 294. Six Justices in *Jennings* agreed that whatever the exact scope of § 1252(b)(9) may be, it did not strip jurisdiction over the *Jennings* detainees' habeas petitions. A case-specific holding that deliberately declines to say what § 1252(b)(9) means cannot be taken to overrule this court's precedent saying what it does mean.[22] Accordingly, *Casa De Maryland* and *Miranda* continue to guide our analysis. And we could, again, end our analysis on § 1252(b)(9) here.

But even if we treated the *Marks* holding in *Jennings* as having abrogated *Casa De Maryland* and *Miranda*, applying that case-specific holding to the facts here would yield the same result. Justice Alito held that irrespective of § 1252(b)(9)'s precise scope, it "does not present a jurisdictional bar" when a petitioner is not seeking review of: (1) "an order of removal"; (2) "the decision . . . to seek removal"; or (3) "the process by which . . . removability will be determined." *Regents*, 591 U.S. at 19 (quoting *Jennings*, 583 U.S. at 293, 294).[23]

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[22] Put another way, the *Jennings* plurality did not decide—as the dissent and Government insist—that a challenge to "the decision to detain [petitioners] in the first place" would be barred. 583 U.S. at 294; *see* Diss. Op. at 76. It merely decided the inverse: that a claim that did *not* constitute such a challenge was *not* barred. *See Khalil*, 164 F.4th at 284 (Freeman, J., dissenting). The Government's reliance on *Jennings* thus rests on a basic logical fallacy and cannot overcome the force of this circuit's binding precedent.

[23] The *Jennings* plurality opinion's reasoning on § 1252(b)(9) was reaffirmed and applied by a majority of the Supreme Court in *Re-*

The pertinent question is "whether the legal questions" arise from an action taken to remove a noncitizen—not "whether *detention* is an action taken to remove [a noncitizen]." *Jennings*, 583 U.S. at 295 n.3. Here, Suri is not challenging Justice Alito's first or third listed characteristic. He does not request review of an order of removal or any part of the process by which his removability will be determined.

Further, Suri's detention claims regarding due process, *see* J.A. 123-26, are independent from and do not implicate the second listed characteristic: the Government's "'decision . . . to seek removal.'" *Regents*, 591 U.S. at 19 (ellipsis in original) (quoting *Jennings*, 583 U.S. at 294). Specifically, Suri alleges that the Government has not shown that "a husband to a U.S. citizen, a father of three young children, and with no criminal history [] needs to be detained." J.A. 125. Suri seeks relief from a "punitive" detention that bore "no 'reasonable relation' to any governmental purpose," *id.* (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)), such as "preventing flight," or "protecting the community." *Zadvydas*, 533 U.S. at 690; *see also id.* at 690-91 (indicating that civil detention violates due process if it is punitive in its intent or excessive in relation to the goals of appearance of noncitizens at immigration proceedings

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gents. *See* 591 U.S. at 19 (quoting *Jennings*, 583 U.S. at 294-95 (plurality opinion), and citing *id.* at 355 (Breyer, J., dissenting)). We note that *Regents*' quotation of the critical language from *Jennings* omitted any reference to a "decision to detain," and that *Regents* favorably cited Justice Breyer's *Jennings* dissent and its narrow construal of § 1252(b)(9). *Öztürk*, 155 F.4th at 209 (Nathan, J., concurring in the denial of rehearing en banc). Further, *Regents* expressly held that § 1252(b)(9) "is certainly not a bar where, as here, the parties are not challenging any removal proceedings." *Id.*

and preventing danger to the community). These claims are specific to his detention. Further, the dissent is wrong to say that cases like Suri's "will grind removal proceedings to a halt." Diss. Op. at 64; *see also id.* at 85. Suri's custody release does not negate any order of removal that may ultimately be issued against him, and he is specifically required to "participate in his removal proceedings" as a condition of his release. *Suri III*, 2025 WL 1392143, at *1. And considering Justice Alito's inquiry on *where* the legal questions arise from, it is evident that Suri's due process claims arise from whether his detention was justified, not the Government's decision to seek removal.

To the extent there is substantive overlap in the First Amendment legal questions that are to be answered in his habeas and removal proceedings, those questions still arise from two separate governmental actions. The Government's act of detaining Suri to prevent speech with which it disagrees is "a violation of the Constitution —quite separate from the removal procedures followed by immigration courts." *Öztürk*, 136 F.4th at 399.[24] Suri's detainment raises constitutional questions—legal questions that are to be decided here, in federal court. And

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[24] Judge Krause, dissenting from the Third Circuit's denial of rehearing en banc in *Khalil v. Trump*, questioned that if courts lack jurisdiction to hear detention-specific claims with some constitutional implications, "what principled reason would [the court] have to review habeas claims alleging detention on account of race, religion, or other protected grounds, so long as the noncitizen is in removal proceedings?" 176 F.4th 295, 299 n.6 (3d Cir.2026) (Krause, J., dissenting from denial of rehearing en banc). We find that concern and observation compelling—and the implication unavoidable: under the Government's position, such claims would be effectively foreclosed altogether.

for the reasons stated in our discussion of § 1252(g) in Section III.C.1.b., the same is still true: "overlap, even substantive overlap, does not make one claim arise out of the other, or necessitate that one claim controls the outcome of the other." *Öztürk*, 136 F.4th at 400. "The Constitution does not yield to administrative convenience, and due process is not suspended merely because two courts may be asked similar questions." *Suri IV*, 2025 WL 1806692, at *1 n.1. Whatever concern about piecemeal litigation in detention and removal proceedings —where petitioners may potentially be granted two chances to argue their claims—is no match for the far more troubling reality of petitioners who are afforded no opportunity for a hearing at all.

The distinction mentioned in *Öztürk* is practically significant because immigration judges and the Board of Immigration Appeals (BIA) lack jurisdiction to decide constitutional challenges. Immigration judges handling analogous adjacent removal proceedings have already found that they lack jurisdiction to do so. *See Khalil*, 164 F.4th at 291 (Freeman, J., dissenting). If an immigration judge cannot develop a factual record on constitutional claims, then a court of appeals reviewing a final order of removal will have a deficient factual record before it. And courts of appeals are obligated to decide such petitions for review "only on the administrative record on which the order of removal is based." 8 U.S.C. § 1252(b)(4)(A). The Government's stance would effectively ensure that, in cases like this, courts of appeals would have no factual record to assess its conduct at all.

The Government's stance on § 1252(b)(9) yields the exact type of results that the Supreme Court would find "absurd." *Jennings*, 583 U.S. at 293. The Government asserts that judicial review would be proper once a final order of removal has been issued. *See* Reply Br. at 34. But here, no final order of removal has been issued in Suri's adjacent removal proceedings. Indeed, a "final order of removal might never come." *Khalil*, 164 F.4th at 291 (Freeman, J., dissenting) (citing *E.O.H.C. v. Sec'y, U.S. Dep't of Homeland Sec.*, 950 F.3d 177, 186 (3d Cir. 2020)). Further, Suri's "core argument is that his free speech and due process rights are being violated, *now*." *Mahdawi*, 136 F.4th at 452. As was the case in *Jennings*, "[b]y the time a final order of removal [would be] eventually entered, the allegedly excessive detention would have already taken place." 583 U.S. at 293. Even if Suri prevails in his removal proceedings, the Government's reading of § 1252(b)(9) would leave him with no recourse for his unlawful detention.

Accordingly, we decline to interpret § 1252(b)(9) in a manner that would deprive Suri "of any meaningful chance for judicial review." *Id.*

b. *Khalil v. President, United States*, 164 F.4th 259 (3d Cir. 2026)

The Third Circuit departed from both of the Second Circuit's decisions on stay motions and this court in *Suri IV* because it read *Jennings*' analysis on § 1252(b)(9) differently. *See Khalil*, 164 F.4th at 274, 277-79. We respectfully disagree with its interpretation.[25]

[25] On July 21, 2026, the Second Circuit held that § 1252(b)(9) deprived a district court of jurisdiction over a similar habeas petition. *See Mahdawi v. Trump* (*Mahdawi II*), 2026 WL 2090981 (2d Cir. July 21, 2026). *Mahdawi II* largely reiterates the Third Circuit's reasoning in *Khalil*. Thus, for the reasons set forth in our discussion of § 1252(b)(9), and those developed below through distin-

To begin, the *Khalil* majority entirely omits any mention of the Supreme Court's strong default presumption that absent a clear statement, statutes should be interpreted to allow judicial review of administrative action. *See Thuraissigiam*, 591 U.S. at 137; *see also Kucana*, 558 U.S. at 237. That presumption can only be overcome "by clear and convincing evidence of congressional intent to preclude judicial review." *Guerrero-Lasprilla*, 589 U.S. at 229 (cleaned up). *Khalil*'s failure to grapple with that presumption substantially undermines its reasoning overall. *See Khalil v. Trump*, 176 F.4th 295, 297 (3d Cir. 2026) (Krause, J., dissenting from denial of rehearing en banc) (writing that the panel majority "jetti-

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guishing *Khalil*, we remain unpersuaded that § 1252(b)(9) strips jurisdiction over Suri's habeas petition that challenges the constitutionality of his detention.

But there is one particular point worth addressing. The Second Circuit stated that Mahdawi was not deprived of any meaningful opportunity for review of his detention because, per the Government's representation in that case, he "could have sought release pending his removal through the administrative process" pursuant to *Matter of Joseph*, 22 I. & N. Dec. 799 (B.I.A. 1999). *Mahdawi II*, 2026 WL 2090981, at *11. But the Government has made no such representation before this court. In fact, the Government here said the opposite—that "once the decision to detain pending removal proceedings was made, an immigration judge has no authority to redetermine that custody decision." ECF No. 126 at 1. And even if such a hearing were available, we see no authority (besides, again, Government representations in other courts that were not made here) indicating that Suri could use such a hearing to challenge the constitutionality of his detention or removal. Still, it is telling that the Second Circuit did not embrace our dissenting colleague's position that Suri would have no way to bring constitutional challenges to his detention and seek release pending his removal, or that the Constitution would permit such an outcome.

sons" the default presumption of judicial review and gives § 1252(b)(9) "its most expansive scope").

With that strong presumption left unaddressed, *Khalil* turned to *Jennings*. *Khalil* held that under *Marks*, the *Jennings* plurality opinion "strongly suggested that § 1252(b)(9) *would* strip jurisdiction over claims with closer connections, like 'challeng[es] [to] the decision to detain them in the first place or to seek removal,' challenges to 'any part of the process by which . . . removability will be determined,' and requests to 'review . . . an order of removal.'" 164 F.4th at 277 (quoting *Jennings*, 583 U.S. at 294). And based off that "strong implication," *id.* at 278, the Third Circuit concluded that *Jennings* abrogated its precedent, *Chehazeh v. Att'y Gen.*, 666 F.3d 118 (3d Cir. 2012), which is analogous to our circuit's precedent *Casa De Maryland* and *Miranda*.

But, for the reasons we just explained, the Third Circuit overreads the *Marks* holding of *Jennings*. Again, under *Marks*, we look to the position of the concurring Justices on the narrowest grounds. *See* 430 U.S. at 193. Justice Alito expressly declined "to provide a comprehensive interpretation" of § 1252(b)(9). *Jennings*, 583 U.S. at 294. Thus, it is an overstatement to understand the language in *Jennings* as "strongly suggest[ing] that § 1252(b)(9) *would* strip jurisdiction over claims with closer connections," *Khalil*, 164 F.4th at 277, when it declined to provide an interpretation of the statute, opting instead for a case-specific holding "[f]or present purposes." *See Jennings*, 583 U.S. at 294. The Third Circuit thus "read[] Justice Alito's opinion to say more" than it does. *Khalil*, 164 F.4th at 284 (Freeman, J., dissenting). In light of *Jennings*' express refusal to provide a comprehensive interpretation of § 1252(b)(9), it cannot be read to require us to overrule our precedent—something we "do not lightly" do. *Hulburt v. Black*, 925 F.3d 154, 161 (4th Cir. 2019) (en banc).

Additionally, even though Justice Alito did not adopt Justice Breyer's interpretation of § 1252(b)(9) (which also accords with *Casa De Maryland*, *Miranda*, and *Chehazeh*), he also did not reject it; he simply declined to get to the merits of a § 1252(b)(9) interpretation. *See Jennings*, 583 U.S. at 294. This avoidance is notable, given that Justice Alito *did* directly engage with Justice Thomas' opposing view on § 1252(b)(9). *See id.* at 295 n.3 (holding that "[w]e do not follow [Justice Thomas'] logic.").

What's more, the *Khalil* majority's *Marks* holding "is incompatible with the views of the remaining five Justices who participated in *Jennings*." *Khalil*, 164 F.4th at 284 (Freeman, J., dissenting). Six Justices agreed that § 1252(b)(9) did not strip jurisdiction over the *Jennings* detainees' habeas petitions. *Jennings*, 583 U.S. at 294-95 (plurality opinion), and *id.* at 355 (Breyer, J., dissenting). As mentioned above, Justice Thomas recognized that he was in the minority on the jurisdictional question, and he joined only the portions of Justice Alito's opinion that addressed the merits of the claims. *Id.* at 314 (Thomas, J., concurring in part) ("But because a majority of the Court believes we have jurisdiction, and I agree with the Court's resolution of the merits, I join Part I and Parts III-VI of the Court's opinion."). And beyond that, *Khalil*'s reading of *Jennings* seems incompatible with the Supreme Court's characterization of *Jennings* two years later. *Compare Khalil*, 164 F.4th at 277 (holding that the "plurality *strongly suggested that*

§ 1252(b)(9) would strip jurisdiction over" "challenges to the decision to detain them in the first place or to seek removal," "challenges to 'any part of the process by which removability will be determined,' and requests to 'review an order of removal'" (emphasis added) (cleaned up)) *with Regents*, 591 U.S. at 19 ("§ 1252(b)(9) does not present a jurisdictional bar where those bringing suit 'are not asking for review of an order of removal,' 'the decision . . . to seek removal,' or 'the process by which . . . removability will be determined.'" (cleaned up)). Accordingly, we decline to follow *Khalil*'s reading of *Jennings* and decline to overturn our precedent limiting the application of § 1252(b)(9) to review of final orders of removal.

We also remain unpersuaded by the other arguments the Third Circuit embraced in *Khalil*. Even if § 1252(b)(9) were not limited to review of final orders of removal, we disagree that it would preclude judicial review here because some of Suri's detention claims raise "legal questions" that may also arise in his removal proceedings. *Khalil*, 164 F.4th at 275. Suri's First Amendment challenges to his detention are distinct from his First Amendment challenges to his removal; whether the Government has chosen to *detain* Suri to punish his speech and associations and to chill and deter future speech, and whether it constitutionally may do so, are different questions from whether the Government has and may seek to *remove* Suri because of his speech and associations. Suri is not arguing that he may not be detained pending removal because he may not be removed. *See* Diss. Op. at 85. His argument is that even if he *can* be removed, the decision to detain him pending removal is independently constitutionally flawed. *See, e.g.*, J.A. 124. Moreover, Suri also raises challenges to his conditions of confinement and restrictions on his speech and religious practice in detention that are entirely unrelated to any legal claim he might advance in removal proceedings. We thus depart from the Third Circuit's suggestion that Suri's detention challenges necessarily "rise[] or fall[] with" his removal challenges. *Khalil*, 164 F.4th at 277.

The Third Circuit also agreed with our colleague Judge Wilkinson that challenging unconstitutional immigration detention in a habeas court "'circumvent[s] the usual immigration process'"—and thereby both disregards Congress' desire for streamlined, efficient immigration proceedings and risks conflicting orders from different tribunals. *Khalil*, 164 F.4th at 279 (quoting *Suri IV*, 2025 WL 1806692, at *10 (Wilkinson, J., dissenting)). We are not convinced that postponing Suri's challenges to his allegedly unconstitutional detention—"cramming judicial review of those questions into the review of" a final order of removal, assuming one ever issues, *Jennings*, 583 U.S. at 293—would do much for administrative efficiency. As mentioned earlier, and as the Third Circuit acknowledged, immigration courts typically cannot hear constitutional claims of the kind Suri brings. *Khalil*, 164 F.4th at 280-81. So during administrative removal proceedings—which, as far as the record reflects, are still pending in Suri's case after more than a year—there is no risk of duplicative proceedings or conflicting orders on Suri's constitutional challenge. And while courts of appeals on a petition for review of a final order of removal may hear such constitutional claims, *id.*, they cannot engage in the fact-finding that claims of this kind will often require—and must instead remand to a different district court or rely on some other, unspecified special "mechanism" for factfinding, *id.* at 280. That is hardly a model of streamlined administrative efficiency. And § 1252(b)(9)'s text does not command it. Rather, § 1252(b)(9) reasonably confines "questions of law and fact" "arising from" removal to removal proceedings in immigration court and petitions for review therefrom, and it leaves the doors of habeas courts open to questions of law and fact arising from detention.

Finally, we disagree with the Third Circuit's suggestion that barring Suri, Khalil, and others like them from challenging their detention by way of habeas presents no constitutional concerns because it merely "delay[s]" judicial review (until review of final orders of removal) and does not entirely "foreclose" it. *Id.* at 275-76, 279. It is true, as the Third Circuit emphasized, that defendants must exhaust the direct appeal process before petitioning a district court in habeas. *Id.* at 275 (citing 28 U.S.C. § 2254(b)(1)(A)). But that is not the same thing at all. A prisoner challenging his criminal conviction has already been found guilty by a neutral tribunal, after a process replete with constitutional safeguards and protections. Suri, by contrast, was picked up on the street by masked ICE agents, and no court or other tribunal—apart from the district court whose jurisdiction the Government rejects—has tested the alleged grounds for his detention or heard his constitutional challenges. That difference matters. *See, e.g.*, *Rasul*, 542 U.S. at 476.

Moreover, we think the Third Circuit failed to give the appropriate weight to the "delay" in question. Suri's claim is that his detention pending removal is itself unconstitutional. Contrary to the view of the Third Circuit, *Khalil*, 164 F.4th at 274, that is a "now or never" injury; if it is not redressed until after removal proceedings, then it cannot be redressed at all. Put differently, because Suri's injury is "here-and-now," and any ruling on his detention claims during the petition for review "would come too late to be meaningful," he has the right to have those detention claims heard now. *Cf. Axon Enter., Inc. v. Fed. Trade Comm'n*, 598 U.S. 175, 191-92 (2023); *see Khalil*, 164 F.4th at 286 (Freeman, J., dissenting) ("[T]o assess whether a claim is now-or-never, we ask whether a court of appeals can meaningfully redress the alleged injury when that court reviews a final order of removal. If not, the noncitizen need not wait for the final order to seek redress.").

3. 8 U.S.C. § 1252(a)(5)

The Government's final provision is § 1252(a)(5), which provides that "a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal." The Government argues that like § 1252(b)(9), § 1252(a)(5) "channel[s] all challenges to removal proceedings into the federal circuit courts under the petition for review process." Opening Br. at 54. But for the same reasons stated in Section III.C.2., § 1252(a)(5) does not bar the district court's review of Suri's habeas petition. It only applies to an order of removal, and no order of removal is at issue here.

* * *

Accordingly, we reject the Government's contention that §§ 1252(g), (b)(9), or (a)(5) stripped the district court of jurisdiction to hear Suri's habeas petition.

D. All Writs Act

Lastly, the district court ordered that Suri not "be removed from the United States unless and until the Court issues a contrary order." *Suri I*, 2025 WL 914757, at *1. It did so pursuant to its "authority to preserve its jurisdiction under the All Writs Act." *Id.* The Government contends that the district court's use of the AWA was "overbroad." Opening Br. at 63. The Government is wrong.

We review the district court's entry of injunction under the AWA for abuse of discretion. *See In re March*, 988 F.2d 498, 500 (4th Cir. 1993).

The AWA provides that "all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). The Supreme Court "consistently has construed the All Writs Act to authorize a federal court 'to issue such commands . . . as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in the exercise of jurisdiction otherwise obtained.'" *Pa. Bureau of Corr. v. U.S. Marshals Serv.*, 474 U.S. 34, 40 (1985) (ellipsis in original) (quoting *United States v. N.Y. Tel. Co.*, 434 U.S. 159, 172 (1977)). The Government first asserts that "the district court offered no reason for its assertion that the order was necessary to preserve its jurisdiction." Opening Br. at 63. But that argument is quickly disposed of by just looking at the statute's text: a court "may issue all writs necessary *or appropriate* in aid of their respective jurisdictions." *Id.* § 1651(a) (emphasis added).

Further, the Supreme Court has stated that courts have an "inherent authority to protect [its] proceedings," *Degen v. United States*, 517 U.S. 820, 823 (1996), to "meet new situations which demand equitable intervention, and to accord all the relief necessary to correct the particular injustices involved in these situations." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 248 (1944). The district court would have been unable to preserve its jurisdiction and "protect its proceedings" as the Government has already taken the position in other cases that a court would lack jurisdiction over "already-removed" noncitizen plaintiffs. *See D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 391 (D. Mass. 2025) (acknowledging DHS' argument "that this [c]ourt has no jurisdiction over already-removed [non-citizens]"). But for the district court's March 20 order, Suri "may well have been deported without the reasonable notice and opportunity for judicial review that 'all nine Justices agree[]' is due." *Suri IV*, 2025 WL 1806692, at *5 (quoting *A.A.R.P.*, 605 U.S. at 95); *see also id.* (noting that the Government "doesn't contest the district court's finding that it apparently intended to deport Suri on March 21"). To preserve the status quo, the district court did not abuse its discretion by invoking its authority under the AWA. *See F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966) (holding that judicial power to preserve the court's jurisdiction or maintain status quo "'has been deemed merely incidental to the courts' jurisdiction to review final agency action'" (quoting *Arrow Transp. Co. v. S. Ry. Co.*, 372 U.S. 658, 671, n.22 (1963))).

Next, the Government contends that the district court's order barring removal is "overbroad" because it lacked a "nexus" or "reasonable connection between the relief ordered and Suri's claims." Opening Br. at 64. But no such constraint appears in the statutory text of the AWA.[26] The Supreme Court has held that "[u]nless appropriately confined by Congress, a federal court may avail itself of *all* auxiliary writs as aids in the performance of its duties, when the use of such historic aids is calculated in its sound judgment to achieve the ends of justice entrusted to it." *N.Y. Tel. Co.*, 434 U.S. at 173 (emphasis added) (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 273 (1942)).

Lastly, the Government argues that "the district court's order arrogated to itself the very authority that Congress has denied it to review final orders of removal." Opening Br. at 65 (citing, *inter alia*, 8 U.S.C. § 1252(a)(5) & (b)(9)). While creative, the Government's argument can't withstand scrutiny. It conflates the authority to review a claim that in theory could be barred by the INA, with the district court's separate authority

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[26] In support of its "nexus" arguments, the Government cites *Omega World Travel, Inc. v. Trans World Airlines*, 111 F.3d 14, 16 (4th Cir. 1997), and *Las Americas Immigrant Advocacy Center v. Trump*, 451 F. Supp. 3d 1191, 1193 (D. Or. 2020). Neither persuade. *Omega World Travel, Inc.* is an antitrust case that has nothing to do with the AWA, nor does it mention the statute. And *Las Americas Immigrant Advocacy Center* is an out-of- circuit district court case on a set of facts much grander in scale and different than here. *See* 451 F. Supp. 3d at 1192-93 (denying plaintiffs' emergency order—with respect to immigration courts nationwide for the duration of the national COVID-19 emergency—requesting to enjoin the government from compelling any respondent to appear in immigration court, toll all court deadlines, and enjoin holding any attorney in contempt for failing to appeal because of COVID-19 concerns). And anyway, even that case suggests that the requisite "nexus" can just be that the "failure to [issue the order] would extinguish [the petitioner's] underlying claims," a nexus clearly met here. *Id.* at 1193 (internal quotation marks omitted).

under the AWA to preserve its own jurisdiction and proceedings.

Here, the district court was presented with a "new situation[] which demanded equitable intervention." *Hazel-Atlas Glass Co.*, 322 U.S. at 248. We hold that it did not abuse its discretion by invoking its "merely incidental," *Dean Foods Co.*, 384 U.S. at 604, power under the AWA to "protect [its own] proceedings." *Degen*, 517 U.S. at 823.

IV. Conclusion

For the reasons stated above, we hold that the district court had habeas jurisdiction and that it did not abuse its discretion in denying transfer of Suri's petition. We further hold that 8 U.S.C. §§ 1252(g), 1252(b)(9), and 1252(a)(5) did not strip the district court of jurisdiction, and that the district court did not abuse its discretion by invoking its authority under the AWA to protect its proceedings.

The scope of habeas corpus "must not be subject to manipulation by those whose power it is designed to restrain." *Boumediene*, 553 U.S. at 766. Specifically, the writ is "a critical check on the Executive, ensuring that it does not detain individuals except in accordance with law." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004). "To hold [that] the political branches have the power to switch the Constitution on or off at will," *Boumediene*, 553 U.S. at 765, would lead to a regime in which Congress and the President declare "what the law is"—"a striking anomaly in our tripartite system of government," *id.* (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)).

The district court's orders are

AFFIRMED.

WILKINSON, Circuit Judge, dissenting:

The Immigration and Nationality Act (INA) strips district courts of subject matter jurisdiction over nearly all claims "arising from" removal proceedings. *See* 8 U.S.C. §§ 1252(b)(9), (g). When an alien challenges the government's decision to detain him at the start of those proceedings, his claim arises from them. That means a district court sitting in habeas may not hear it. Instead, the alien must wait and raise his arguments—however meritorious—before a court of appeals in a petition for review (PFR) of a final order of removal.

This conclusion follows straightforwardly from the words "arising from," which are broad. In reaching the opposite conclusion, the majority saps them of all meaning, construing them so narrowly that nothing will arise from anything. Further, the majority breezes past such emphatic statutory terms as "any," "all," "sole and exclusive," "only," and "no," designed to denote unmistakable congressional intent.

In short, the majority rips an irreparable hole in the INA's jurisdiction-channeling scheme. Every alien who is detained pending removal will now have a pathway into district court for a thinly veiled habeas challenge to his removability. Each such suit will grind removal proceedings to a halt, invite a district court to take control of them, and require the government to prove the alien's removability a second time. This medley of duplication and delay is precisely what Congress intended to avoid when it channeled nearly all claims arising from removal proceedings into the PFR process.

Today's holding may be a victory for Suri, but it is a loss for the immigration system Congress carefully designed. I respectfully dissent.

I.

The origins of the INA's jurisdiction-channeling scheme lie in 1961. That year, Congress "eliminat[ed] . . . the previous initial step in obtaining judicial review" of a deportation order: "a suit in a District Court." *Foti v. INS*, 375 U.S. 217, 225 (1963). Without a district court suit, "the sole and exclusive procedure for[] the judicial review of all final orders of deportation" would be a PFR filed in a court of appeals. Act of Sep. 26, 1961, Pub. L. No. 87-301, § 5(a), 75 Stat. 650, 651. The "basic purpose" of the new PFR process was to "expedite the deportation [process] by preventing successive dilatory appeals to various federal courts." *Foti*, 375 U.S. at 226.

The scheme, however, did not work exactly as planned. Some "courts construed the 1961 amendments as channeling review of final orders to the courts of appeals, but still permitting district courts to exercise their traditional jurisdiction over claims that were viewed as being outside of a 'final order.'" *INS v. St. Cyr*, 533 U.S. 289, 313 n.37 (2001). In other words, these courts held that "various decisions and actions leading up to or consequent upon final orders of deportation" could be challenged directly in a district court outside the PFR process. *Reno v. Am.-Arab Anti-Discrimination Comm.* (*AADC*), 525 U.S. 471, 485 (1999). The result was more dilatory suits.

Congress responded in 1996 with the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which made the INA's judicial review provisions "significantly more restrictive." *Id.* at 475. Whereas the 1961 law had designated the PFR process as the exclusive forum for "judicial review of all final orders of deportation," Act of Sep. 26, 1961, § 5(a), 75 Stat.

at 651, the 1996 law made the PFR process the exclusive forum for "[j]udicial review of *all questions of law and fact* . . . arising from *any action taken or proceeding brought* to remove an alien," IIRIRA, Pub L. No. 104-208, § 306(a)(2), 110 Stat. 3009, 3009-610 (1996) (codified as amended at 8 U.S.C. § 1252(b)(9)) (emphasis added). The revised language was broad enough to foreclose district court review not just of final orders, but of most actions leading up to those orders.

For good measure, Congress placed another provision in IIRIRA that bolstered the exclusivity of the PFR process: district courts were prohibited from hearing "any cause or claim by or on behalf of any alien arising from the decision or action by the [government] to commence proceedings, adjudicate cases, or execute removal orders." *Id.* at 3009-612 (codified as amended at 8 U.S.C. § 1252(g)). This addition was "clearly designed" to ensure that the government's "discretionary determinations" would "not be made the bases for separate rounds of judicial intervention outside the streamlined process that Congress ha[d] designed." *AADC*, 525 U.S. at 485. Like the 1961 law before it, it was "specifically directed at the deconstruction, fragmentation, and hence prolongation of removal proceedings." *Id.* at 487.

An additional IIRIRA provision prohibited courts from "set[ting] aside any action or decision by the [government] . . . regarding the detention or release of any alien." IIRIRA, § 303(a), 110 Stat. at 3009-586 (codified at 8 U.S.C. § 1226(e)). And another prohibited courts from reviewing "any other decision or action of the [government] the authority for which is specified . . . to be in the discretion of the [government]." *Id.* at § 306(a)(2), 110 Stat. at 3009-607 (codified as amended at 8 U.S.C. § 1252(a)(2)(B)). "[P]rotecting the Executive's discretion from the courts" could "fairly be said to be the theme of the legislation." *AADC*, 525 U.S. at 486.

Once again, however, courts interpreted the law narrowly. In *St. Cyr*, the Supreme Court held that IIRIRA did not strip district courts of *habeas* jurisdiction even though it stripped them of regular jurisdiction. 533 U.S. at 314. Congress responded soon after by adding the words "habeas corpus" to the law's jurisdiction-stripping provisions, clarifying that habeas should not be treated differently. REAL ID Act of 2005, Pub. L. No. 109-13, § 106(a), 119 Stat. 231, 310-11. Its conference report explained that "[d]espite Congress's efforts to limit judicial review in 1996, the Supreme Court [had] expanded it," leading to "bifurcated and piecemeal litigation." H.R. Rep. No. 109-72, at 173-74 (2005) (Conf. Rep.). By adding references to habeas to the law, Congress "intended to preclude *all* district court review of *any* issue raised in a removal proceeding." *Id.* at 173 (emphasis added).

Today's INA is the product of this 65-year back and forth between Congress and the courts. When courts found exceptions in the INA's broad language, Congress repeatedly pushed back, clarifying that it meant what it said. It used sweeping language because it had a sweeping vision.

The present statutory scheme is blanketed with emphatic terms. In explaining what is stripped from district court jurisdiction, the scheme refers to "any cause or claim" and "all questions of law and fact." 8 U.S.C. §§ 1252(g), (b)(9); *see Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008) ("[T]he word 'any' has an expansive meaning, that is, 'one . . . of whatever kind.'" (citation omitted)); *Norfolk & W. Ry. v. Am. Train Dispatchers Ass'n*, 499 U.S. 117, 129 (1991) ("'[A]ll . . . ' indicates no limitation."). It refers to "any action or decision" and "any action taken or proceeding brought." 8 U.S.C. §§ 1226(e), 1252(b)(9). And it refers to a "sole and exclusive" procedure, *id.* § 1252(a)(5), that is to be the "only" means of review, *id.* § 1252(b)(9), outside of which "no court shall have jurisdiction," *id.* § 1252(g). Between "any," "all," "sole and exclusive," "only," and "no," it is difficult to imagine how Congress could have expressed its intentions more forcefully.

By channeling into the PFR process any and all claims "arising from" removal proceedings, Congress meant to send a clear message. To repeat: habeas claims that challenge removal orders are the province of the system specifically designed by Congress for removal proceedings. That includes petitions that are no more than artfully pled as "independent" of removal disputes. What Congress did not want to happen is exactly what has happened here. Any fair reading of the history makes clear that the attempts of the legislative branch to channel removal claims into the removal process have been repeatedly rebuffed by the courts. The frustration has been compounded by the fact that the Supreme Court has articulated what Congress intended. *Foti*, 375 U.S. at 232; *AADC*, 525 U.S. at 487; *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020). But the Court's pronouncements too have been consigned along with statutory text to an ineffectual state. The result has been, all too predictably, "successive dilatory appeals," *Foti*, 375 U.S. at 226, "bifurcated and piecemeal litigation," H.R. Rep. No. 109-72, at 174, and "the deconstruction, fragmentation, and hence prolongation of removal proceedings," *AADC*, 525 U.S. at 487.

II.

Moving from the panoramic to the particular, at least two INA provisions stripped the district court of subject matter jurisdiction over Suri's habeas petition. The first is 8 U.S.C. § 1252(b)(9). This provision reads:

> Judicial review of all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order. Except [via the PFR process], no court shall have jurisdiction, by habeas corpus . . . or by any other provision of law . . . to review such an order or such questions of law or fact.

The government's decision to initiate removal proceedings against Suri was an "action taken or proceeding brought to remove an alien," and Suri's challenge to his detention "aris[es] from" that decision. *Id.* As a result, "no court" outside the PFR process may hear his challenge. *Id.*

A.

The majority's main contention is that the government's decision to detain an alien does not arise from its decision to initiate removal proceedings against him. This argument fails to comprehend immigration detention.

The Department of Homeland Security (DHS) does not have freewheeling authority to detain aliens whenever it wishes. Instead, Congress permits DHS to detain an alien only "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). In the same vein, DHS regulations instruct that an alien may be arrested only when (or after) the alien is served with a "notice to appear"—the document that initiates removal proceedings. 8 C.F.R. § 236.1(b)(1). The initiation of removal proceedings is both a necessary and sufficient predicate to detention.

Detention also makes removal possible. It "necessarily serves the purpose of preventing . . . aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed." *Demore v. Kim*, 538 U.S. 510, 528 (2003). Removal proceedings "would be vain" if aliens "could not be held in custody pending the inquiry into their true character." *Wong Wing v. United States,* 163 U.S. 228, 235 (1896). In this sense, deportation is "detention's goal." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Detention has become an ordinary "aspect of the deportation process." *Demore*, 538 U.S. at 523. During the most recent time period for which data is readily available, between 30 and 40 percent of aliens were detained during their removal proceedings. U.S. Dep't of Just. Exec. Off. for Immigr. Rev., *Statistics Yearbook: Fiscal Year 2018*, at 19 (2018) (data from fiscal year 2014 through fiscal year 2018). This means detention was an aspect of the removal process for tens of thousands of people each year. *Id.*

It is true, as the majority points out, that detention does not invariably follow whenever the government initiates removal proceedings. Majority Op. at 36-37. But the decision *whether* to detain does. The government must choose "detain" or "do not detain" before it serves an alien with a notice to appear. 8 C.F.R. § 236.1(b). Regardless of which option it picks, its choice is bound up in its decision to seek removal.

Most importantly, the government's detention decision and its removal decision are connected exercises of prosecutorial discretion. The INA provides that the government "may" detain an alien during removal proceedings, 8 U.S.C. § 1226(a), and "the word 'may' *clearly* connotes discretion," *Bouarfa v. Mayorkas*, 604 U.S. 6, 13 (2024) (quoting *Biden v. Texas*, 597 U.S. 785, 802 (2022)). When an alien believes the government has exercised its discretion against him in violation of a constitutional guarantee, there is no principled basis on which he can distinguish detention from removal. As a result, the legal questions are the same. *See Johnson v. Whitehead*, 647 F.3d 120, 124 (4th Cir. 2011) ("Congress has specifically prohibited the use of habeas corpus petitions as a way of obtaining review of *questions arising in* removal proceedings." (emphasis added)).

Indeed, Suri's arguments in this case emphasize the point. His habeas petition contends that his detention and his attempted removal violate the First Amendment for the same reason: both are intended "to retaliate against and punish" him for being "supportive of Palestinian rights or critical of Israel." J.A. 283. If a court sitting in habeas were to hold that his detention was unlawful, his attempted removal would likely also be unlawful.

The majority is assuredly right, as the Supreme Court has already suggested, that the words "arising from" in § 1252(b)(9) require a tighter causal nexus than simple but-for causation. *Jennings v. Rodriguez*, 583 U.S. 281, 292-94 (2018) (plurality opinion); Majority Op.

at 35. The nexus must be "more than [] weak or tenuous." *Aguilar v. ICE*, 510 F.3d 1, 10 (1st Cir. 2007). But all the features of immigration detention discussed above make the nexus between the decision to remove and the decision to detain quite tight indeed. *Accord Jennings*, 583 U.S. at 316-19 (Thomas, J., concurring in part and concurring in the judgment); *Öztürk v. Hyde*, 155 F.4th 187, 191-94 (2d Cir. 2025) (Menashi, J., concurring in the denial of rehearing en banc).

If a decision, i.e. detention, this bound up in the commencement of removal proceedings does not "aris[e] from" the proceedings, then what does? The majority's construction of "arising from" is so strained that the words will divert from the PFR process the very things that Congress wished to channel into it.

These features of immigration detention also help explain why it is an altogether different scenario when an alien challenges "assault [by] a guard or fellow detainee" or seeks recovery for personal injury because "a truck hits the bus transporting aliens to a detention facility." *Jennings*, 583 U.S. at 293 (plurality opinion). Although the government's decision to initiate removal proceedings is the but-for cause of both claims, it has a tight causal nexus with neither. The same may be true when an alien challenges "inhumane conditions of confinement" in immigration detention or brings a claim of prolonged confinement. *Id.*

Suri also presents due process claims related to the conditions and duration of his detention which he asserts are distinct from his First Amendment arguments. But the claims all "aris[e] from" his removal proceeding just the same. 8 U.S.C. § 1252(b)(9). The First Amendment and due process claims are all part of the same petition. There would be no reason for Suri to raise his due process contentions if he were not detained pursuant to the initiation of removal proceedings. But-for causation may not conclusively establish the requisite nexus between detention and removal, but it surely bears materially upon the question.

To find Suri's due process claim to be "independent" suggests a boilerplate "conditions/duration" add-on to every single habeas petition and opens the prospect of habeas involvement in every case of an immigration-related detention. Indeed, Suri gives us no reason to believe that the same contentions would not be available as a matter of course to every future habeas applicant. Yet the majority suggests that these additional claims, standing by themselves, are enough to establish jurisdiction in federal court. Majority Op. at 41-42. This simply leaves the statute in tatters. It is one more circumvention device, which the Supreme Court must once more eliminate.

B.

Next the majority contends that even if the decision to detain arises from the decision to remove, § 1252(b)(9) is inapplicable in Suri's case because no final order of removal has yet been issued. Majority Op. at 43. It justifies this conclusion because § 1252 is titled "[j]udicial review of orders of removal" and the first sentence of § 1252(b) says "[w]ith respect to review of an order of removal . . . the following requirements apply."

This interpretation imposes more weight on the title and prefatory clause than they can bear. As far as the title is concerned, "the heading of a section cannot limit the plain meaning of the text." *Bhd. of R.R. Trainmen v. Balt. & Ohio R.R. Co.*, 331 U.S. 519, 529 (1947). As for the prefatory clause, "with respect to" simply means "in relation to." *With Respect to*, Merriam-Webster Online Dictionary (last visited June 26, 2026); *see also Mullin v. Doe*, No. 25-1083, 2026 WL 1825840, at *7 (U.S. June 25, 2026) (noting that Congress's use of the phrase "with respect to" supports a "broad understanding" of its intent to strip federal courts of jurisdiction over other INA claims).

Section 1252(b)(9) does relate to final orders, since it channels a wide range of questions into review of "a final order." But the provision relates to final orders by "deferring issues" until there is a final order, not by meaning nothing until there is a final order. *AADC*, 525 U.S. at 495 (Ginsburg, J., concurring in part and concurring in the judgment).

In fact, the majority's construction makes no sense of the provision's text and structure. The last sentence of § 1252(b)(9) refers to review of "such an order or such questions of law and fact." If the provision applied only to final orders, then "or such questions of law and fact" would be wholly unnecessary. *See Jennings*, 583 U.S. at 320 (Thomas, J., concurring in part and concurring in the judgment). Similarly, a nearby provision—§ 1252(a)(5)—already says that a PFR "shall be the sole and exclusive means for judicial review of an order of removal." If § 1252(b)(9) applied only to final orders, then it would be entirely redundant. *See id.*

The majority's construction disregards the provision's history and purpose too. As detailed above, the 1961 immigration law already provided that a PFR was the exclusive procedure for "judicial review of all final orders of deportation." Act of Sep. 26, 1961, § 5(a), 75 Stat. at 651. When Congress amended the law in 1996, it changed "all final orders of deportation," *id.*, to "all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien," IIRIRA, § 306(a)(2), 110 Stat. at 3009-610. It made this change for the purpose of sweeping into the PFR process the "various decisions and actions leading up to . . . final orders." *AADC*, 525 U.S. at 485. In holding that § 1252(b)(9) applies only after a final order has been issued, the majority erases the 1996 law in favor of the 1961 one.

The majority tries to minimize the novelty of its pronouncement by relying on Fourth Circuit case law, Majority Op. at 43-44, but it lends no support. Our decision in *Casa de Maryland v. U.S. Department of Homeland Security* simply declared that § 1252(b)(9) "applies only with respect to review of an order of removal"—a nearly exact quote of the statute's prefatory clause. 924 F.3d 684, 697 (4th Cir. 2019) (emphasis omitted) (quoting *St. Cyr*, 533 U.S. at 313). And *Casa de Maryland* was a generic Administrative Procedure Act challenge to a federal policy, detached from any specific alien's removal proceedings. *Id.* at 690-91. Since "the government ha[d]n't moved to remove any of the Plaintiffs," there was never going to be a PFR into which questions could be channeled. *Id.* at 696. That is hardly similar to an alien's challenge to an aspect of his ongoing removal proceedings.

Moreover, the majority's construction of § 1252(b)(9) runs counter to the one suggested by two Supreme Court decisions. In *AADC*, several aliens brought selective enforcement claims shortly after their removal proceedings began, long before there were any orders of removal. 525 U.S. at 473-74. The Court held that § 1252(g) barred a district court from reviewing their claims, and in the process noted that "§ 1252(b)(9) channels judicial review of *all*" the "decisions and actions" also channeled by § 1252(g). *Id.* at 483. The Court did not apply § 1252(b)(9) in *AADC* for a separate reason having to do with the rules for cases that were pending on the date IIRIRA became law. *Id.* But the unmistakable implication of the Court's discussion is that § 1252(b)(9), by its own terms, covered a selective enforcement claim brought before there was a final order.

Next consider *Jennings*, 583 U.S. 281. In that case, a three-Justice plurality suggested that the provision would strip jurisdiction if an alien sought to challenge legal issues arising from "the decision to detain them in the first place or to seek removal" or "any part of the process by which their removability will be determined" —quintessentially pre-final order challenges. *Id.* at 294-95 (plurality opinion). Two Justices in concurrence said as much explicitly. *Id.* at 317-18 (Thomas, J., joined by Gorsuch, J., concurring in part and concurring in the judgment). Implications, of course, do not make a holding. But a court of appeals should think carefully before it comes to a conclusion on which five individual Justices in one case (*Jennings*) and a majority opinion in another case (*AADC*) recently cast doubt. All the more so when the appellate court's conclusion, like this one, contravenes the relevant statute's text, structure, history, and purpose.

C.

Finally, the majority indicates that even if Suri's detention arises from his removal proceedings, and even if § 1252(b)(9) applies before a final order of removal has been issued, the provision still does not strip jurisdiction over his challenge to immigration detention. Majority Op. at 49-52. This is because the *Jennings* plurality warned against construing § 1252(b)(9) in a way that would make some claims "effectively unreviewable," *id.* at 293 (plurality opinion), and Suri's detention claim would, according to the majority, be insufficiently reviewable on a PFR. The majority's view is in direct conflict with the Third Circuit's decision in *Khalil v. President, U.S.*, 164 F.4th 259 (3d Cir. 2026) (per curiam) and the Second Circuit's decision in *Mahdawi v. Trump*, No. 25-1113 (2d Cir. July 21, 2026).

The majority also misunderstands the *Jennings* plurality's warning. A claim is "effectively unreviewable" when there is no "meaningful chance for judicial review." *Jennings*, 583 U.S. at 293 (plurality opinion). Suri, like the petitioners in *Khalil* and *Mahdawi*, *will* have a meaningful chance. If he receives a final order of removal and files a PFR in a court of appeals, the court will have explicit authority to consider his "constitutional claims." 8 U.S.C. § 1252(a)(2)(D). And if the factual record before the court of appeals is insufficient to facilitate constitutional consideration, that court may initiate special factfinding procedures. *Khalil*, 164 F.4th at 280-81 (discussing the options of appointing a special master or remanding under the Hobbs Act for district court factfinding). Review by a court of appeals on a PFR will feature hallmarks of due process similar to review by a district court in habeas.

It is true that review on a PFR may happen months later than review in habeas. But Congress knew that when it decided to channel almost all removal-related claims into the PFR process. Indeed, the fact that a PFR occurs near the end of the road is the *reason* Congress chose it as the vehicle for consolidated review. Providing earlier opportunities for review would invite "bifurcated and piecemeal litigation." H.R. Rep. No. 109-72, at 174. In prioritizing efficiency and consolidation over immediate redress, Congress accepted the risk that an alien with a meritorious claim might have to wait months before receiving relief. To hold, as the majority does now, that Congress could not have intended Suri to wait so long is to turn Congress's scheme on its head.

Outside the immigration system, our law often prioritizes efficiency and finality over immediate relief. As the Third Circuit pointed out in *Khalil*, for example, an innocent defendant who is wrongfully convicted and sent to prison due to ineffective assistance of counsel must exhaust his direct appeal before pursuing habeas relief. *See, e.g.*, 28 U.S.C. § 2254(b)(1)(A); *Khalil*, 164 F.4th at 275-76. The same is true of a defendant who sits in prison because his counsel failed to object to a selective prosecution. The "delay does not foreclose meaningful review. It just streamlines the process for seeking it." *Khalil*, 164 F.4th at 275.

The Second Circuit's decision in *Mahdawi* is of a piece with *Khalil*. It also reinforces the points made throughout this dissent. The petitioner in *Mahdawi* filed a habeas petition challenging the Government's decision to detain him upon the commencement of removal proceedings. *Mahdawi*, slip op. at 8. The petition is indistinguishable from Suri's and Khalil's. The Second Circuit agreed with the Third in *Khalil*: the detention claim was "inextricably intertwined with the claim that removal itself is unlawful," and therefore is barred by § 1252(b)(9). *Id.* at 24. To hold otherwise would "undo [the] scheme" Congress codified and "produce the very proliferation of parallel proceedings . . . that this statutory provision was designed to avoid." *Id.* at 40. The walls are closing in on the majority's analysis, and I regret that my friends diverge from the gathering force of pertinent authority.

The majority expresses special concern about what would happen if no final order of removal is ever issued against Suri. Majority Op. at 52. But if the government sought to detain him indefinitely without resolving his case one way or another, he could bring a prolonged detention claim in habeas. *See Jennings*, 583 U.S. at 293. Since the causal nexus between the government's decision to initiate removal proceedings and a claim of indefinitely prolonged detention is weak, the INA would not strip district courts of jurisdiction over it. If, alternatively, no final order were ever issued because an Immigration Judge dismissed Suri's case, then he would not need to present his arguments in a PFR. That is what happened in two recent cases raising many of the same concerns as this one. *See* Press Release, ACLU, Immigration Judge Terminates Removal Proceedings Against Child Development Scholar Rümeysa Öztürk (Feb. 9, 2026); Press Release, ACLU, Mohsen Mahdawi's Removal Proceedings Terminated by Immigration Judge (Feb. 17, 2026).[*]

[*] I am aware that there is an active circuit split about whether Section1225(b)(2)(A) of the IIRIRA may be construed to deny bond hearings to noncitizens mandatorily detained after entering the country without authorization. *Compare Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026); *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026), *with Barbosada Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026); *Lopez-Campos v. Raycraft*, 175 F.4th 713 (6th Cir. 2026). The case at bar has no bearing on that question as it implicates different immigration statutes and different factual circumstances.

D.

The majority next leans on the presumption against jurisdiction-stripping. Majority Op. at 33, 53-54. But the Supreme Court has repeatedly counseled against treading that ground when the statutory text is clear. *See Mullin v. Doe*, No. 25-1083, 2026 WL 1825840, at *8 (U.S. June 25, 2026); *Bouarfa v. Mayorkas*, 604 U.S. 6, 19 (2024). When it is "clear and convincing" that Congress intended to preclude judicial review, "we have no reason to resort to the presumption of reviewability." *Bouarfa*, 604 U.S. at 19 (quotation omitted). To insist upon reviewability in the face of plain statutory language to the contrary would deprive Congress of its longstanding control over federal court jurisdiction. *See Sheldon v. Sill*, 49 U.S. (8 How.) 441, 448-49 (1850) (emphasizing Congress's control over the jurisdiction of the federal courts).

Lurking in the majority's analysis is the implication that barring habeas review of Suri's claim would violate the Constitution's Suspension Clause. *See* U.S. Const., art. I, § 9, cl. 2. It is well settled, however, that Congress may bar habeas when it makes an "adequate and effective" substitute available, *Swain v. Pressley*, 430 U.S. 372, 381 (1977), and that "judgments about the proper scope of the writ are 'normally for Congress to make.'" *Felker v. Turpin*, 518 U.S. 651, 664 (1996) (quoting *Lonchar v. Thomas*, 517 U.S. 314, 323 (1996)).

The PFR process is an adequate and effective substitute for habeas. *See, e.g.*, *Mahdawi*, slip op. at 34; *Khalil*, 164 F.4th at 279; *Mohamed v. Gonzales*, 477 F.3d 522, 526 (8th Cir. 2007); *Iasu v. Smith*, 511 F.3d 881, 888 (9th Cir. 2007); *Gonzalez-Alarcon v. Macias*, 884 F.3d 1266, 1278-79 (10th Cir. 2018); *Alexandre v. U.S. Att'y*

Gen., 452 F.3d 1204, 1206 (11th Cir. 2006) (per curiam). Suri's entire argument to the contrary consists of a single conclusory paragraph. *See* Response Br. at 46. Our job is to put the choice of Congress into effect.

I do not for a moment minimize the harm experienced by someone who spends more time detained than he should. But within the bounds of the Constitution, it is Congress's job to balance that harm against other considerations. The balance it struck in § 1252(b)(9) is one that prioritizes orderly adjudication. Our job is to honor its choice.

III.

If that were not enough, an additional INA provision —8 U.S.C. § 1252(g)—also stripped the district court of subject matter jurisdiction over Suri's habeas petition. This provision reads:

> Except [via the PFR process] and notwithstanding any other provision of law . . . including section 2241 of title 28, or any other habeas corpus provision, . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the [government] to commence proceedings, adjudicate cases, or execute removal orders.

Suri's challenge to his detention "aris[es] from" the government's "decision" to "commence proceedings" against him. *Id.* As a result, "no court" outside the PFR process may hear his challenge. *Id.*

The majority's § 1252(g) analysis leans heavily on the Supreme Court's *AADC* decision. Majority Op. at 34-35. It is true enough that *AADC* says § 1252(g) is "narrow[]" and "applies only to [the] three discrete actions" it mentions: commencing proceedings, adjudicating cases, and executing removal orders. 525 U.S. at 482. It is not a "general jurisdictional limitation" and does not apply, for example, to "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.*

The Court in *AADC* also acknowledged, however, that several steps may be involved in commencing proceedings, and that some—such as "issu[ing] a show cause order"—should "be considered a mere specification of the decision to 'commence proceedings' which . . . § 1252(g) covers." *Id.* at 485 n.9. So it is not true that § 1252(g) covers literally only challenges to the decision to commence proceedings. The question when applying § 1252(g), as when applying § 1252(b)(9), is how closely intertwined the challenged act is to the commencement of proceedings.

For all the reasons explained above, the decision to detain is inextricable from the commencement of proceedings. It is not at all like the decision to reschedule a hearing or even the decision to open an investigation, which are multiple steps away along the causal chain. An initial immigration arrest is so closely bound up in the decision to remove that it is fair to characterize it not only as an action arising from the commencement of proceedings, but also as "an action taken *to* commence proceedings." *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (emphasis added) (quoting *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013)). In holding otherwise, the majority places us in direct conflict with the Eleventh Circuit's decision in *Alvarez* and in near conflict with two other circuits. *See Tazu v. Att'y Gen., U.S.*, 975 F.3d 292, 297 (3d Cir. 2020) (characterizing post-order arrests as "action[s] . . . to . . . execute removal orders") (quoting 8 U.S.C. § 1252(g)); *Sissoko v. Rocha*, 509 F.3d 947, 949-50 (9th Cir. 2007) (holding that "§ 1252(g) applies" to a detention claim when the INA requires the alien be detained at the start of proceedings).

Reading § 1252(g) to bar Suri's challenge to his detention is consonant with *AADC* in another way too. *AADC* explained that "[§] 1252(g) was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion." 525 U.S. at 485 n.9. The government's decision to detain Suri was an exercise of the same prosecutorial discretion as its decision to seek his removal, and if one violates the First Amendment, then so does the other. There is no way a district court can adjudicate the lawfulness of Suri's detention without committing the evil that § 1252(g) was directed against.

IV.

Either 8 U.S.C. § 1252(b)(9) or § 1252(g), considered alone, would strip the district court of jurisdiction over Suri's petition. But "[i]n reading a statute we must not look merely to a particular clause, but consider in connection with it the whole statute." *Kucana v. Holder*, 558 U.S. 233, 245 (2010) (quoting *Dada v. Mukasey*, 554 U.S. 1, 16 (2008)). And when considering § 1252(b)(9) and § 1252(g) together, the combined force they exert exceeds even the sufficient force each exerts on its own.

So too when we consider § 1226(e) and § 1252(a)(2)(B). Recall that § 1226(e) prevents courts from "set[ting] aside any action or decision by the [government] . . . regarding the detention of any alien," and § 1252(a)(2)(B) prevents courts from reviewing "any other decision or action of the [government] the authority for which is specified under this subchapter to be in the discretion of the [government]." The decision to detain an alien at the start of removal proceedings is of course a discretionary decision regarding detention. The government has not based its argument in this appeal on either provision, and there may be reasons why one or both do not apply here. But their presence in the INA reinforces the conclusion reached in the case at bar. The statute contains a phalanx of provisions intended to prevent district courts from interfering in removal proceedings.

"Customarily," federal courts address subject matter jurisdiction "first" and other jurisdictional issues second. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 578 (1999). Since the foregoing discussion is sufficient to conclude that the district court lacked subject matter jurisdiction, I would not venture beyond it. The other issues in this appeal—the district of confinement and immediate custodian rules—present questions of personal jurisdiction and venue that would best be left for another day. *See Kanai v. McHugh*, 638 F.3d 251, 258 (4th Cir. 2011).

V.

Having applied the particulars, it is time to return to the larger perspective. The story has been one of courts too often ignoring the clear and repetitive gravamen of Congress's wishes to unfortunate effect. Whether looking at the jurisdiction-stripping provisions or the related enactments threaded throughout Title 8, Congress's intention has been plain. It has sought to preserve the essence of due process and judicial oversight without, at the same time, surrendering the system of immigration to the paralysis of duplicative process epitomized in redundant PFR and habeas review.

It is dispiriting to observe that the courts have, over a period of time, often attempted to tease ill-conceived and unpersuasive loopholes out of strong, affirmative legislative language. Courts have the crucial mission of ensuring that due process is accorded to those individuals facing removal. But the precise route by which due process is achieved is preeminently a matter for democratic selection, as evidenced in legislative ground rules and the executive enforcement thereof. It may well be that our system could be more efficient on the one hand or more humane on the other, but compromises are by their nature imperfect, and those struck here do not strike me as unconstitutional.

The majority's decision subverts these compromises. Under its new rules, any alien who is detained pending removal may access the district court by filing a habeas petition that makes a conclusory allegation that his detention is unlawful. If the allegation is a thinly disguised attempt to challenge his removal ("I cannot be detained pending removal *because* I cannot be removed"), no matter. The district court will enjoin his removal to preserve its jurisdiction over his detention claim, as the district court did here. The government will be required to litigate the alien's removability in two forums and win in both.

The sequence is all too predictable. If the claim against detention has arguable merit, the district court will issue orders that effectively determine the outcome in the alien's removal proceedings, as the district court did here. And if the claim has no merit, the alien will still have bought himself time in which his removal was stayed. It is hard to say which outcome is more antithetical to Congress's streamlined jurisdiction-channeling scheme: the one in which a district court exerts control over removal proceedings by fiat, or the one in which dilatory tactics succeed in stretching removal proceedings for many months without securing a change in ultimate outcome.

Multiply this set of problems by the many thousands of aliens who are detained pending removal, and the scope of the majority's folly becomes clear. The duplication and delay that will result from its holding is immeasurable. All this in the face of a statute Congress has amended multiple times over 65 years for the purpose of reducing duplication and delay.

The majority's analysis is imbued throughout with sympathy for Suri's plight and for his First Amendment arguments. The majority's sympathy is both understandable and humane in the very best sense of that word. But the questions in this appeal are jurisdictional, not substantive, and the rules we craft for Suri are the rules that will govern everyone else too. Congress has made its own clear judgment about how removal proceedings should go forward and how the immigration system is supposed to work. Those judgments too are not without weight. Courts cannot neuter Congress's jurisdiction-channeling scheme without damage to the constitutional structure and ultimately to the rule of law itself.

With all respect to my friends and colleagues in the majority, I would direct the dismissal of the habeas petition in this case.

APPENDIX B

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

Case No. 1:25-cv-480 (PTG/WBP)

BADAR KHAN SURI, PETITIONER

v.

DONALD TRUMP, ET AL., RESPONDENTS

Filed: Mar. 20, 2025

ORDER

This matter comes before the Court on Petitioner Badar Khan Suri's Petition for Writ of Habeas Corpus (Dkt. 1), which was filed on March 18, 2025. Dkt. 1. According to the Petition, on March 17, 2025, the Department of Homeland Security arrested and charged Petitioner with removability, pursuant to 8 U.S.C. § 1227(a)(4)(C). *Id.* At the time of filing, Petitioner alleged that he was presently being detained al the Farmville Detention Center in Farmville, Virginia. *Id.*

Pursuant to the Court's authority to preserve its jurisdiction under the All Writs Act, pending a ruling on the Petition, it is hereby

ORDERED that Petitioner shall not be removed from the United States unless and until the Court issues a contrary order. 28 U.S.C. § 1651; *FTC v. Dean Foods Co.*, 384 U.S. 597, 603 (1966) ("The All Writs Act, 28 U.S.C. § 1651(a), empowers the federal courts to 'issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.'").

Entered this 20th day of March, 2025
Alexandria, Virginia

/s/ PATRICIA TOLLIVER GILES
PATRICIA TOLLIVER GILES
United States District Judge

APPENDIX C

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

Case No. 1:25-cv-480 (PTG/WBP)

BADAR KHAN SURI, PETITIONER

v.

DONALD TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; RUSSELL HOTT, IN HIS OFFICIAL CAPACITY AS FIELD OFFICE DIRECTOR OF WASHINGTON, IMMIGRATION AND CUSTOMS ENFORCEMENT; JEFFREY CRAWFORD, IN HIS OFFICIAL CAPACITY AS WARDEN OF FARMVILLE DETENTION CENTER; TODD LYONS, ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY; MARCO RUBIO, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; PAMELA BONDI, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, RESPONDENTS

Filed: May 14, 2025

ORDER

This matter comes before the Court on Petitioner's Motion to Compel Respondents to Return Petitioner to this District (Dkt. 5) and Petitioner's Motion for Release on Bond (Dkt. 20). On May 14, 2025, the Court heard argument. For the reasons stated in open court, it is hereby

ORDERED that Petitioner's Motion for Release on Bond (Dkt. 20) is **GRANTED** and Petitioner's Motion to Compel Respondents to Return Petitioner to this District (Dkt. 5) is **DENIED** as moot; it is further

ORDERED that Petitioner Dr. Khan Suri is to be immediately released on his personal recognizance during the pendency of his habeas proceedings subject to the following conditions: (1) Petitioner will reside in Virginia; (2) Petitioner will attend all court hearings in this case in person unless excused by order of the Court; and (3) Petitioner will participate in his removal proceedings. Petitioner is **not** required to submit to any GPS monitoring; it is further

ORDERED that Respondents shall not attempt to re-detain Petitioner without providing 48-hours notice to the Court and Petitioner's counsel; and it is further

ORDERED that Respondents' request to stay this Court's decision pending appeal is **DENIED**.

Entered this 14th day of May, 2025

Alexandria, Virginia

/s/ PATRICIA TOLLIVER GILES
PATRICIA TOLLIVER GILES
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Civil Action No. 1:25-cv-00480-PTG-WBP

BADAR KHAN SURI, PETITIONER

v.

DONALD TRUMP, RESPONDENT

May 14, 2025
10:04 a.m.

TRANSCRIPT OF BOND HEARING PROCEEDINGS BEFORE THE HONORABLE PATRICIA TOLLIVER GILES, UNITED STATES DISTRICT COURT JUDGE

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Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

[4]

MORNING SESSION, MAY 14, 2025

(10:04 a.m.)

THE COURTROOM CLERK: The Court calls *Badar Khan Suri versus Donald Trump,* et al., Case Number l:25-cv-480.

May I have appearances, please, first for the Petitioner?

MS. GREGG: Good morning, Your Honor. Sophia Gregg from the ACLU of Virginia on behalf of Petitioner. I'm here with Eden Heilman, Astha Sharma Pokharel, Hassan Ahmad, Naureen Arastu, Geri Greenspan, Vishal Agraharkar, and Celine Zhu.

THE COURT: Good morning to all of you.

MS. SPAVINS: Good morning, Your Honor. Elizabeth Spavins, Assistant United States Attorney. With me at counsel's table is my colleague, Christian Cooper, and then presenting for the Respondents today will be David Byerley of the Office of Immigration Litigation at Main Justice, and next to him is Tom Scott-Sharoni, also from OIL. Thank you.

THE COURT: Good morning to all of you. So, we are on today on Petitioner's pending motions, the motion for return, as well as the motion for bail.

MS. GREGG: That's correct, Your Honor.

THE COURT: So I'll hear from you first.

MS. GREGG: Yes, Your Honor. If there's no preliminary matters, we'll start with our motion for bail.

We're here today because Dr. Khan Suri is being unlawfully detained for his wife—his and his wife's lawful expression in [5] support of Palestinian rights and his ties through their marriage to her father.

About two months ago, after celebrating Ramadan with his Georgetown community, Dr. Khan Suri came home to armed masked men who handcuffed him and drove him away from his wife, children, and the life he had. He is now over a thousand miles away from his home, the people he cherishes most, his lawyers, and this court, packed into an overcrowded detention center and subjected to the most severe restrictions usually reserved for people convicted of violent crimes awaiting deportation.

The impact of the unlawful actions on Dr. Khan Suri and on the millions of lawful residents, students, professors, and visa holders of all kinds is hard to overstate. Their speech isn't just chilled. They are afraid. They are afraid to exercise their core constitutional rights to write an op-ed, to post on social media, and to dare to criticize the government.

This fear is profound. And what is shocking is that the government doesn't deny it. The government announced it would do this in advance, and they have doubled down at every opportunity, and they've had ample opportunity to respond to Dr. Khan Suri's claims in this case before this hearing.

In response that he is being imprisoned and retaliated against for speech, the government says nothing. In response to the claim that the government targeted Dr. Khan Suri because of his wife's speech, her Palestinian origin, or family ties, the [6] government says nothing.

In response to the claim that the government targeted Dr. Khan Suri because of his wife—I'm sorry. The government does not claim that Dr. Khan Suri was imprisoned due to any illegal conduct or for any other constitutionally sound basis.

We're asking this Court to release Dr. Khan Suri pending his habeas petition, after which this Court can fully examine the constitutional violations of the government's actions.

THE COURT: Do we even know the exact statements that are at issue? Have they identified the alleged statements that he made?

MS. GREGG: The government has not put forth any evidence so far in this case regarding any statements or any other reason for his detention.

THE COURT: Okay.

MS. GREGG: Courts considering bond pending immigration habeas petitions use the *Mapp*—use the *Mapp v. Reno* standard, which requires a court to evaluate two things: Whether or not there are substantial claims in the case and whether or not there are extraordinary circumstances. There are both here.

While the government argues that Petitioner must meet a heightened standard in *Eliely,* which requires both a substantial constitutional claim upon which he has a high likelihood of success, and extraordinary circumstances, that standard is for habeas petitioners already tried and convicted by a court of law.

[7]

Here, Dr. Suri is being detained on unproven civil immigration charges challenging the unconstitutionality of his detention.

Release on bail here under the standard articulated in *Mapp* is reasonably similar to pretrial release in a criminal case.

Dr. Khan Suri brings several substantial claims, but most predominantly is the claim that he has been detained solely for the content of his speech, which must be afforded the highest protection under the First Amendment.

The government doesn't deny this. The government has targeted him in retaliation for exercising his right to free speech under the First Amendment. And, again, the government doesn't deny this.

That must be a substantial claim. Likewise, there is no evidence that the government has targeted and detained Dr. Khan Suri except in retaliation for exercising his lawful speech and associations.

The evidence submitted by Petitioner, namely the government's own statements, supports the fact that the government's objectives in detaining Dr. Khan Suri is punitive in purpose and violates the due process.

In considering exceptional circumstances, the courts consider what *Mapp* calls unusual cases. Except for the handful of current cases that we've brought to the attention of [8] the Court and the Court is aware, in nearly identical circumstances there have been no cases in which the government has used this particular provision to detain someone for lawful speech.

That is exceptional. What is also exceptional is the fact that there is no evidence that Dr. Khan Suri is a danger or a flight risk. The government was given ample opportunity by this Court in advance of this hearing to present any evidence in opposition to this motion for release, and it provided none.

Dr. Khan Suri, however, has demonstrated through an abundance of letters of support from people who know him that he is a kind, caring friend and colleague who leads with a commitment to peace.

He's supplemented with even more letters that pour in every day from people of the Georgetown community and people who have known him

THE COURT: I've read them all.

MS. GREGG: Yes. If released, he would return to his home in Roslyn, Virginia where he lives with his wife and children.

If he's able to, his Georgetown dean and director fully support Dr. Khan Suri's return to work and teaching.

The director of the Alleywood Center is here today in support of Dr. Khan Suri's release as well, as are many members of his community.

Finally, release is necessary to make the habeas remedy [9] effective because Dr. Khan Suri's attention necessarily constitutes a continued infringement on his First Amendment and due process rights.

An infringement on those rights may be justified if the government had presented a legitimate case, but it has not done so.

In the meantime, with every passing day, his detention chills the speech of millions and millions of noncitizens who may now not exercise their First Amendment rights for fear of being whisked away to a detention center thousands of meals away from their home.

For these reasons and the many other reasons articulated in our motions and supplemental briefing, we ask this Court to release Dr. Khan Suri so that his habeas remedy can be effective.

THE COURT: One issue that they raised in their supplemental, and I don't know if it's necessary for me to reach it in order to rule today, is with regard to your void for vagueness challenge. Do you have any authority where a void for vagueness challenge has been made as to a policy or regulation?

MS. GREGG: Well, Your Honor, the—I think the cases that, first, that the government cited don't necessarily say that it doesn't apply to a policy, per se, but here the issue is that there is not just the law that he's being charged under that is void for vagueness, but it's implementation through the executive orders themselves. That, as a whole, would—are void because [10] the void of vagueness standard basically requires that due process make the policy or the law clearly defined.

And if it doesn't provide the kind of notice that will enable a person or people to understand what the conduct prohibits, it would be—or if it would authorize or even encourage arbitrary discrimination or enforcement, as it has done here, it would—it would not satisfy the void for vagueness standards that are articulated in the cases.

We don't have—even if the Court is not inclined to consider the void for vagueness argument or claims in this case as being a substantial claim, there are many substantial claims in this case that would be sufficient for the standard under *Mapp*. It doesn't say that all the claims must be substantial so much that a substantial claim would be sufficient.

THE COURT: Okay. So it's your position that, either under your First Amendment claim or under your Fifth Amendment claim, either of those would be sufficient?

MS. GREGG: Correct, Your Honor.

THE COURT: Thank you.

MR. BYERLEY: Good morning, Your Honor.

THE COURT: Good morning.

MR. BYERLEY: As the Court's opinions have shown, ample attention has been paid to the brief, so I'm not going to repeat a lot of what's been said in the brief.

THE COURT: Thank you.

[11]

MR. BYERLEY: But, briefly, the Court should deny the pending motions because the standards set by the *United States verus Eliely,* which is the Fourth Circuit's, granted it's unpublished, but it's the Fourth Circuit's equivalence of whether habeas release pending a determination on an ultimate habeas petition should be granted, is pretty high. It requires substantial constitutional claims on which he has a high probability of success.

THE COURT: Haven't they created sustained claims, though?

MR. BYERLEY: Your Honor, the Government does not believe that they have because of many of the jurisdictional bars that we talked about in our briefing, including 1252(a) (5) and (g). Those jurisdictional issues, even maybe not, perhaps, directly at issue, even in the context of determining whether *Eliely* release is appropriate, but it does present an obstacle to their claims on the merits. And then furthermore—

THE COURT: How so?

MR. BYERLEY: So, what Mr. Suri is challenging in his petition is the decision to institute removal proceedings against him.

THE COURT: That's not what he's challenged.

MR. BYERLEY: Yes, Your Honor.

THE COURT: He's challenged specifically his detention and his transfer. I agree, like, there was a shift from the original petition and what we have clearly stated in the amended petition, [12] and they're clear. It's very focused. It's only—the removal proceedings can continue. Those are separate. But what they're speaking to now, what they are challenging and the prayer for relief that they are seeking directly addresses detention, detention/transfer.

MR. BYERLEY: Yes, Your Honor. The government agrees that this petition challenges detention, but the decision regarding detention is inextricably bound up in the decision to institute removal proceedings in the first place.

So, here we have a case that's somewhat similar to AADC, the anti- —the anti-Arabic discrimination—I'm sorry. It's a mouthful.

THE COURT: That's okay.

MR. BYERLEY: Where they were challenging their removal—the basis of their removal proceedings. And while some of them may have been detained and some of them may not have been, what we're dealing with here is Mr. Suri's challenging his detention, which is attendant to and directly tied into the decision to institute removal proceedings in the first place.

THE COURT: No court—I mean—and this is not on you—but the government has consistently made the same argument in several jurisdictions at this stage in similar—similarly situated cases, and no one has adopted that reading.

MR. BYERLEY: So, granted, Your Honor, many of those cases are out of circuit and are not binding. At least one court did [13] find our way. That was *Taal versus Trump* out of the Northern District of New York earlier this year. But, granted, courts—there are reasonable grounds to disagree, and we understand that there are decisions disagreeing with those positions.

The government disagrees with those decisions and is considering or actively pursuing appellate recourse. But, granted, yes, I acknowledge that there are other decisions that do not go our way, but what I want to emphasize here is that under *Jennings* and under *AADC,* the government disagrees with those conclusions because what it did—

THE COURT: But *AADC* was—you know, it only reaches—1252(g) only reaches three discrete actions:

The decision to commence proceedings, adjudicate cases, or execute removal orders.

MR. BYERLEY: Yes, Your Honor, but under 1252(a) (5) and (b) (9), what we also have is review of questions that arise in removal proceedings. Here, Mr. Suri is challenging the basis of his detention, the basis of the determination under 12.7.

THE COURT: But the detention decision was made prior to the NTA, right, and removal proceedings actually initiating?

MR. BYERLEY: No, Your Honor. The deportability determination was made prior to the decision to—the issuance of the NTA, but it forms the basis of the NTA, and so they're inextricably tied up with one another such that (a) (5) and (b) (9) apply, as well as 1252(g).

[14]

THE COURT: But even if those were to—you know, even with those statutes, the courts are clear that they do not preclude challenges to the extent of the government's authority.

MR. BYERLEY: Your Honor, I think you may be referring to *Demore versus Kim,* which held that 1226(e) did not prohibit constitutional challenges to the legislation. I don't think that—

THE COURT: I'm looking at *Miranda v. Garland,* the Fourth Circuit case.

MR. BYERLEY: I'm sorry?

THE COURT: Miranda—

MR. BYERLEY: Miranda.

THE COURT: —v. Garden, the Fourth Circuit case.

MR. BYERLEY: Yes, Your Honor. But the government's position here is that (a) (5) and (b) (9), it applies here because he is challenging his detention, which is inextricably bound up with the 1227 (a) (4) (C) determination.

And so the government believes that those provisions apply to bar review in this case and that the proper forum for which Dr. Suri to bring his challenges is an immigration court before an immigration judge, and then appeal to the BIA, if necessary, and then appeal to the Fourth Circuit as necessary—or Fifth Circuit. I'm sorry.

THE COURT: I understand your argument. I'm not saying I agree with it, but I understand.

[15]

MR. BYERLEY: Yes, Your Honor.

THE COURT: You can move on.

MR. BYERLEY: So, furthermore, under the *Eliely* standard, I think, as Your Honor correctly identified, the void for vagueness challenge suffers from fatal flaws. First is that the Fourth Circuit says that the void for vagueness doctrine focuses on legislation, not policies or actions.

THE COURT: But I don't even have to reach that.

MR. BYERLEY: Yes, Your Honor, that's correct. We also agree with that proposition as well. Because, under the *Eliely* standard, it's only constitutional claims which are at issue on these sorts of motions.

Furthermore, the government posits that, to the extent that the Court is considering granting interim release, the Court also has to look at whether the interim release is necessary to render the habeas—render the habeas remedy effective, to the extent the Court grants the habeas petition in his favor.

Over the 17 years since *Eliely* was decided, not a single court on an opposed motion has granted release pending a determination of habeas—on a habeas petition.

The two cases on which Petitioners rely, *Brooks versus Wilson* and *Young versus Antonelli,* Eastern District of Virginia, 2018; District of South Carolina, 2021, respectively; both of those decisions came on unopposed motions. And in that context, what the Court was looking at was that in each of those cases the [16] Fourth Circuit had recently adopted the petitioner's argument in terms of improper—improperly elevated mandatory minimums.

And so, if the habeas would have been granted in their favor on the merits, then they would have served the full time that they wouldn't have needed to serve had the Court been able to rule on the habeas petition instantaneously. So that's not a similar situation to what we have here. The court's habeas remedy would still be effective even if—

THE COURT: How so?

MR. BYERLEY: Because the Court is—because it's, one, again going back to the jurisdictional issues; but, two, if the Court grants the habeas petition on the merits, there's—he's—the authority exists for his detention. It's not a similar situation in *Young* and *Brooks* where the sentence was invalid—would have been found invalid if—the elevated sentence would have been found invalid if the Court had—if he had needed to await the entire resolution of the habeas proceedings.

But, again, bringing this back to 1252(a)(5), (b)(9), and (g), he's challenging underlying decisions which are inextricably tied up with the—

THE COURT: I don't accept that reading. I don't think it's inextricably intertwined. I don't.

MR. BYERLEY: Yes, Your Honor. Well, that's the government's primary argument on this. And then, to the extent [17] that the Court is inclined to grant the motion, the government requests that the conditions set out in our supplemental briefing filed on Monday be imposed on any release that the Court may provide. And, as well, we would ask for a stay of seven days pending the government's determination on appellate recourse..

THE COURT: Let's go through those. In your supplemental, you indicate that the Court should treat this as—or approach this as it does with respect to a preliminary injunction and impose a bond. That—you rely on a Third Circuit case. You don't have any Fourth Circuit case that's done that, right?

MR. BYERLEY: So, Your Honor, the—it's widely recognized, and I think, even in the recent *Ozturk* opinion from the Second Circuit, recognized that granting this sort of release early is tantamount to a preliminary injunction reviewable order, as well as there's a recent Supreme Court case, I think, recognizing that as well.

THE COURT: But bond in a preliminary injunction context is, you put—you impose a bond so the person who the injunction—who has been enjoined, that there is something in place that would make them whole if it was found out that the injunction was issued in error.

But here, there is nothing that would be needed, necessarily, to make the government whole, is there?

MR. BYERLEY: Well, there would be the cost of redetaining him. The conditions that the government proposes in our—

[18]

THE COURT: The cost of what?

MR. BYERLEY: The cost of sort of redetaining him and making a rearrest, in the event that that becomes necessary.

But, in any event, the Court can tailor its remedy to adequately balance the needs of both sides, and we believe that these conditions as we've suggested are reasonable, to the extent the Court is inclined to grant release on Petitioner's motion.

THE COURT: Many of the conditions that you would seek seem to go to a risk of flight or they would be ones that the Court would impose if there was a risk of flight. What evidence do you have that he poses a risk of flight?

MR. BYERLEY: So, Your Honor, these are just generic—these are just generic conditions that would be imposed by an immigration judge if—in the event that the immigration judge was deciding this issue.

In terms of—in terms of flight risk and danger to the community, those things are not in the record. But what we—what the government would say is that Secretary Rubio made this determination under 1227(a)(4)(C)(1), and so there is a consideration about whether his—whether his presence in the community does cause potential serious foreign affairs consequences that should also be considered kind of separate and apart from flight risk and danger to the community.

THE COURT: That determination has never been really presented to this Court. I haven't seen that memorandum.

[19]

MR. BYERLEY: Yes, Your Honor, that's correct. It's not in the record yet, and I do not believe it's been filed in the immigration court yet either at this point.

THE COURT: Okay. Do you have more?

MR. BYERLEY: Your Honor, no. Your Honor's reviewed the briefing. For the reasons stated in the government's briefing and also as presented here today, the Government requests that the Court deny the pending motions. Thank you.

MS. GREGG: Thank you, Your Honor. As the Court already addressed, I won't go through all the issues with the government's argument as to the INA bars in this case, but it's just notable that the *AADC* case is speaking to one provision in the INA, and the government is using it to show that there's some bar through 1252(b)(9), which Miranda clearly says that the government does not have discretion to violate the Constitution—its discretion to detain does not include the discretion to violate the Constitution, which is exactly what's at issue here.

And, as the Court already adequately addressed, all the other cases have gone the other way, cases that are dealing specifically with students who are being targeted for their speech under the same foreign policy bar.

The government brought up the case of Mr. Tall. However, Mr. Taal was not challenging his detention because he was not detained at the time that he brought his case. He was seeking an [20] injunction from being detained and, therefore, challenging the underlying immigration charges, and so we would put that forth, but all the other courts in this country that have looked at these cases and situations identical to the one here for—impacting Dr. Suri, they've all said that the INA doesn't—no provision of the INA bars consideration of their claims.

We've already gone over why habeas remedy is effective, and I think that that's been sufficient, but for the *Eliely* cases, the government talks about how we've cited other—no other case has been decided in this manner in the Fourth Circuit, and that is specifically because this type of remedy is for unusual cases. There hasn't been a situation that has risen to this level, and the government's conduct has not been so egregious as it has in this case, but that shouldn't preclude the Court from considering the same standard under *Mapp* that all the other circuits—or that many other circuits consider to be the standard for immigration habeas cases.

Likewise, the government's contention that he should have conditions placed on him, if he is to be released, we think that that is inappropriate, since they have conceded that he is not a flight risk or a danger to the community.

We have presented ample evidence that he is neither of those things. In fact, he is a well-respected and wellloved member of his community with very strong ties to this Northern Virginia area.

[21]

If the Court would like further assurances, we are happy to consider any sort of location specific restrictions in the DMV area, but we would ask that the Court not subject him to any body-worn GPS because we find that is inappropriate, and the government has not presented any reason that that should be the case.

Additionally, Your Honor, we ask that, although—we ask that if the government seeks a stay on any potential grant of release in Dr. Khan Suri's case, we ask that we be allowed to address that as well. We think that's not appropriate.

THE COURT: Well, I think you should address that now, their arguments with respect to the stay, because there's a certain—there's a test that must be satisfied before the Court would grant a stay.

MS. GREGG: Right.

THE COURT: And the first is whether there would be a—is whether the applicant has shown a likelihood or strong likelihood of succeeding on the merits.

MS. GREGG: Correct, Your Honor. And I think, by virtue of a grant on this motion, we would have shown that they do not—they are not likely to succeed on the merits because of the substantial claims in this case.

We don't believe that the—the government hasn't presented any evidence here for any lawful authority in detaining Dr. Khan Suri. We've demonstrated, on the other hand, that there [22] is evidence, sufficient evidence that his detention is currently unlawful and violates his First Amendment and Fifth Amendment rights.

Therefore, we would say that they would not likely succeed on the merits. They also cannot demonstrate any irreparable harm, because, again, he is neither a flight risk or danger to the community, and release will not interfere with his removal proceedings.

As we've laid out in other motions, his removal proceedings are remote, so even if he's in a detention center or he's out free in the world, his immigration removal proceedings are not impeded in any way.

He, however, will suffer irreparable harm. The separation from his family, from his community, from his studies, all suggest—all go to show that he would suffer if he is—if a stay was put in place. Every day that he is detained, his rights are being violated.

And also, his release will enable him to participate meaningfully in the rest of these proceedings.

A stay would preclude that and continue to harm him in that way. The third factor relates to other parties' interests. There are no other parties in this case.

And fourth is in public interest, and we would argue that Dr. Khan Suri's release is very much in the public interest. His continued detention would likely continue to have a chilling [23] effect on protected speech, which is squarely in the public interest because, you know, his release would signal to the rest of the country, to noncitizens, that they will not be impacted for exercising their First Amendment rights as well.

The community will benefit, and those who deeply care and value him will benefit from his release as well.

And for all those reasons, Your Honor, we would say that the government cannot prove any one of those factors that are required for a stay. Thank you.

THE COURT: Anything else from either side? I'm going to take a brief recess, and then I'm going to come back. I'll take 15 minutes.

(Thereupon, a recess in the proceedings occurred from 10:34 a.m. until 11:28 a.m.)

THE COURT: Okay. When there was a government's motion to dismiss, I issued a memorandum opinion. I'm not going to do that in this case. I plan on ruling from the bench.

In this case, Petitioner has moved for two forms of relief: One, to be returned to the Eastern District of Virginia, and two, to be released on bond pending adjudication of his habeas petition.

For the purposes of my ruling, I adopt the facts that I laid out in my memorandum opinion that I previously issued, and I'm first going to turn to the jurisdictional arguments raised by the Respondents before I turn to the merits of Petitioner's [24] motion.

And first, Respondents argue that since Petitioner is discretionarily detained under Section 1226(a) and 1226(e), that restricts judicial review because the Secretary's discretionary decisions or actions regarding the detention of alien or revocation or denial of bond or parole, that, essentially, this Court has no authority to review ICE's decision to detain the Petitioner in Texas.

The Supreme Court clearly stated in the case of *Demore versus Kim* that any provision said to bar review in habeas requires a particularly clear statement of

Congressional intent, and that Section 1226(e) contains no explicit provision barring habeas review.

And then, in *Miranda v. Garland,* the Fourth Circuit further concluded that Section 1226(e) only forbids review of the Attorney General's actions and decisions in individual proceedings.

And with respect to the Petitioner's challenge to his detention, the *Miranda* court also observed that, in *Jennings v. Rodriguez,* the Supreme Court concluded that "the extent of the government's detention authority is not a matter of discretionary judgment, action, or decision, and is thus outside the scope of 1226(e)."

And, indeed, many circuits have reasoned that 1226(e) does not limit habeas jurisdiction over constitutional claims or [25] questions of law or challenges to officials' statutory authority.

And so I find that here 1226(e) does not bar this Court's review because this Petitioner does not challenge a specific decision or action of the Attorney General regarding bond or parole, and because he raises a constitutional challenge to the secretary's authority, which is not a discretionary judgment.

Now, with respect to the claims that they—or the bar that they allege exists under 1252(g), in the *AADC* case, the *Reno versus AADC,* the Supreme Court was clear that 1252(g) is to be narrowly construed, and it only reaches three discrete actions of the Attorney General, and that is the decision or action to commence proceedings, adjudicate cases, or to execute removal orders.

And, you know, there is a circuit split on whether 1252(b)(9) can even apply before a final order of removal is issued, but—and the Fourth Circuit hasn't definitively answered the question.

But in looking at the cases in the Fourth Circuit, it's clear that those rulings indicate that 1252(b)(9) would not bar review here, because in *Miranda,* as I just stated—well, there, the Court found that, to the extent that it's a challenge to the government's authority, then 1252(b)(9) does not bar the Court's review. And Respondents have relied on the case of *Johnson v. Whitehead*. That's another Fourth Circuit case to support their position that review here would be precluded, but that case is [26] very different than the case before me, because there the Petitioner was trying to, in the habeas case, was trying to relitigate claims that he had made in his removal proceedings, and that's not the case here. The proceedings before me are totally separate from the removal proceedings.

And finally, I turn to their allegation of the jurisdictional bar because of 1252(a)(2)(B)(ii). That statute does not deprive this Court of jurisdiction because the statute that they point to, 1231(g), is not a specified grant of discretionary authority for the Attorney General to authorize transfers. It's just not, and that's clear when looking at the *Reno* case, which is a Fourth Circuit case, 2019.

And so, for these reasons, I find that there is no jurisdictional bar to the Court reaching or deciding this habeas petition, and, therefore, I turn to the merits of the Petitioner's motion, and I'm going to start with the motion for bond release.

And here, the parties don't agree whether or not *Mapp v. Reno* or *Eliely* provide the standard, and I don't think this Court definitively has to decide that because, under *Mapp,* it requires that the Petitioners raise substantial constitutional claims and that there are exceptional circumstances that exist that makes the grant of bail necessary to make the habeas remedy effective. And in *Eliely,* the standard is very similar. The only exception is that it requires the prisoner to show substantial [27] constitutional claims on which he has a high probability of success. And the reason why I say it's not necessary for the Court to reach that is because I find here that Dr. Khan Suri would meet either.

And I also would like to point out, I'm not entirely sure that *Eliely* does apply, because in that context it was a petitioner who had been held mandatorily after having committed a crime, and that's not the case here.

And so now I'm going to turn to those constitutional claims. And I don't think I need to reach all of it. Petitioner raises first a Fifth Amendment challenge to the lawfulness of his detention, the Rubio determination, and their policy.

And, essentially, he alleges that he's being retaliated against for his religious exercise, his speech, and for his association. Essentially, he alleges that he was targeted, apprehended, and detained in order to retaliate against him and punish him based on his or his wife's protected speech and his association with his wife and his father-in-law. And here, the First Amendment extends to noncitizens, as it makes no distinction between citizens and noncitizens.

Now, in order to make out a First Amendment retaliation claim, a plaintiff or petitioner must show that he has a right protected by the First Amendment; the Defendant's or Respondent's actions were motivated or substantially caused by the exercise of that right; and that the Defendant's actions caused the Plaintiff [28] some injury. Now, what's uncontroverted before me in this record, because I gave the government multiple opportunities to submit any type of filing to controvert these claims or to support their opposition to this motion, and they have declined.

And so what I have before me as uncontroverted is that the plaintiff made posts, and these allegations are—these statements that I am outlining come from both the amended petition, which was verified, as well as the declaration of his wife, and that is that he made posts expressing support for the Palestinian people criticizing the death toll in Gaza, affirming international law principles, and criticizing U.S. support for Israel's support in Gaza.

Additionally, his wife began posting on social media about the war in Gaza, after losing family and friends in the war, and she shared information about developments in Gaza.

Statements expressing support for the Palestinian people criticizing the death toll in Gaza, affirming international law principles, and criticizing U.S. support do not appear to qualify as incitement, defamation, obscenity, or true threats of violence, and thus they are unlikely to fall into any exceptions for protected speech.

Indeed, I join several other courts that have found on similar facts that speech regarding the conflict there and opposing Israel's military campaign is likely protected political speech.

[29]

Thus, the Court finds that Petitioner was likely engaging in protected speech.

Now, with respect to his freedom of association claim that is part of his First Amendment claim, he alleges that he is being punished for his wife's Palestinian origin or speech or her father's past as an advisor in the government in Gaza.

The First Amendment similarly restricts the ability of the state to impose liability on an individual solely because of his association with another. That's the *Clayborne* case from the Supreme Court.

Courts recognize a First Amendment freedom of intimate association. That's the *Roberts versus USJCs* case, also from the Supreme Court.

And here, again uncontroverted, Petitioner has offered evidence that he is being retaliated against and punished for his marital relationship and his wife's familial relationship. And these concern his freedom of intimate association. Relationships such as family and marriage often want First Amendment protection because of—because such protections safeguard the ability independently to define one's identity that is essential to any concept of liberty. That's the *Roberts* case.

And so I find that the Petitioner has satisfied the first element as to his freedom of association claim because Petitioner's marriage to his wife and association with her and her father is protected by the First Amendment.

[30]

Now, with respect to the second element, Petitioner has offered evidence sufficient for this Court to infer that Respondent's detention and apprehension of Petitioner was caused by his speech, his wife's speech, or his association with his wife and his wife's father.

As evidence of the respondent's retaliatory motive, Petitioner points to several statements of Respondents' or their representatives. First, he identifies statements made by Secretary of State Marco Rubio on Twitter calling student protesters Hamas supporters and indicating that "the United States should cancel the visa of every foreign national out there supporting Hamas and get them out of America."

Also, "We will be revoking the visas and/or green cards of Hamas supporters in America so they can be deported." These are the statements that I am quoting —I am referencing based on the allegations in the petition. I'm not indicating that Dr. Khan Suri is a Hamas supporter. Let me be clear about that. I'm recounting the statements here.

There was also a statement that they referenced by President Trump, and it is, "We will terminate the visas of all those Hamas sympathizers and will get them off our college campuses, out of our cities, and get them the hell out of our country". And there was another statement. "One thing I do is, any student that protests, I throw them out of the country. You know, there are a lot of foreign students. As soon as they hear [31] that, they're going to behave."

Additionally, the petition, as well as the—it's docket number 62, I believe, that was the supplemental filing by Petitioner in this case, attaches additional statements or postings made by DHS officials that specifically appear to reference Dr. Khan Suri because he's referred to as a Georgetown scholar, a Georgetown foreign exchange student.

I note for the record that, although officials—and these posts, I believe, were all after the filing of this petition, and those statements were made publicly on Twitter or in other forms. There was no evidence submitted to this Court regarding statements that he made. The government did not submit any statements to this Court in this regard, but yet these statements were made out on social media.

So, Respondents have declined to dispute the merits of Petitioner's claims that he is being retaliated against for his speech or his association. Essentially, in the opposition, they rest on three propositions, and, one, that the challenges to Petitioner's removability are more appropriately channeled to his removal proceedings. But, as I said earlier, this habeas petition is not about the removal proceedings. Those are separate. They are not being challenged here.

So I reject that argument.

They also argue that Respondents do not have to disclose their reasons in cases concerning foreign affairs, which are [32] committed to the Secretary's discretion, and that the Secretary's determination is a facially legitimate justification for his determination and removal, and thus they are not required to show or prove anymore.

As I noted earlier, I haven't even received evidence of his determination because that memorandum was never submitted to this Court, although it could have been.

But in any event, those arguments appear to rest on the notions of deference and a presumption of regularity on the part of the executive.

While there are many contentions in which courts should take care to respect the prerogatives of the political branches, whatever deference may be appropriate, concerns of national security and foreign relations do not warrant abdication of the judicial role. That's the *Holder* case, *Holder v. Humanitarian Law Project,* another Supreme Court case from 2010.

So, in no case do courts simply accept without more government handwaving at deference and discretion.

And so, even in *Holder,* because Respondents rely on that case, too, the *Holder v. Humanitarian Law Project* case, it discusses the need for caution when faced with substitute courts substituting their judgment for those of the political branches.

It also stated that, even when national security and foreign relations are at stake, the Court does not defer to the government's reading of the First Amendment.

[33]

Also, at no point is the government relieved of any duty to adequately substantiate its determination. And even in the *Humanitarian Law Practice* case, the Court noted that, "the judgment of Congress and the executive is entitled to significant weight," but that statement alone, that concept alone does not mean that it predetermines the outcome.

And finally, as to the First Amendment claim, the Plaintiff or Petitioner has sufficiently demonstrated an injury in terms of his continued detention.

Now, moving to the Fifth Amendment claim, under the due process clause of the Fifth Amendment, "No person shall be deprived of life liberty or process without due process of law." And freedom from imprisonment, from government custody, detention, or other forms of physical restraint lies at the heart of liberty the clause protects." That's *Zadvydas,* a Supreme Court case.

Under *Zadvydas,* subsequent due process claims are cognizable in civil immigration cases, and detention is not designed to be punitive. That's the *Demore* case and the *AADC* case, both from the Supreme Court.

Now, detention is permissible to ensure the appearance of noncitizens at future immigration proceedings and preventing danger to the community, and I agree with other courts in immigration-related cases who have found the Fifth Amendment due process challenges to the detention to be substantial. Here, [34] Petitioner alleges that his detention is unjustified because it serves no lawful purpose and may be punitive. And at this time Respondents offer no other lawful purpose for Petitioner's detention, nor directly refute that Petitioner's detention is punitive.

In addition, Respondents have provided no other evidence of Petitioner's activities, actions, or statement regarding any—that would consist of any Hamas propaganda or demonstrate that he has done anything in support of Hamas.

To the extent Petitioner's apprehension and detention is based on a chain of familial association, his marital tie to his wife, and his familial tie to her father, these actions would violate the due process clause in the Fifth Amendment as well as the First Amendment.

And given Petitioner's uncontroverted evidence, I find that he has shown a substantial likelihood—or a likelihood, a high probability of prevailing on those substantial constitutional claims he has raised.

Now I'll turn to the second requirement, and that is the exceptional circumstances that exist that would grant—which would make the grant of bail necessary to make the habeas remedy effective.

Okay. Now, considering the traditional bail factors, we look to the risk of flight or danger to society. And here, there's no evidence to suggest that Petitioner is a flight risk [35] or poses a danger to society. He is a professor at Georgetown University. He is married to an American citizen. He has three young children, all who reside in Virginia. Respondents have offered no reason to suggest that he would have any incentive to flee.

In addition, I received letters from many colleagues, community members, and even family written on Dr. Khan Suri's behalf, emphasizing his personal and scholarly commitments to peace and conflict resolution.

What those letters also evidence, though, are very strong ties to community here. And so, additionally, the Court has seen no credible evidence supporting that he is a danger to the community. He has not been accused of any crime, and he's not been convicted of any crime. No criminal record was presented to this Court or any facts from which this Court could conclude that he would be any sort of danger.

I also find that his release is necessary to make habeas remedy effective. It's the only remedy that could make habeas remedy effective, and that's for many reasons. One is that it would disrupt the chilling effect of retaliation for protected political speech or intimate associations, but, more importantly for him, having been confined for this amount of time for what the record before this Court is punitive reasons.

As the Supreme Court explained, the loss of First Amendment rights for even minimal periods of time unquestionably [36] constitutes irreparable harm.

And so, because I find that Petitioner has raised substantial constitutional claims for which he has a high probability of success and that extraordinary circumstances exist which make the grant of bail necessary to make the habeas remedy effective, this Court grants Petitioner's motion for bond release, and so I will deny the motion for return as moot.

In terms of conditions, I'm going to impose the following: And that is that he reside in the—in Virginia; that he attend all court hearings in this case in person, unless excused by order of the Court; and that he participate in his—the separate removal proceedings.

I'm not going to impose any of the other suggested conditions proposed by the government because I don't find that they are necessary in this case because they typically speak to situations where there is the concern about flight, and I just don't find that here.

I also do not think it is necessary to impose any bond in this case, because that's also not necessary to assure his appearance. Your exceptions are preserved.

Mr. Byerley, did you want to be heard separately as to your motion to stay, or did you already raise everything that you wanted to raise?

MR. BYERLEY: No, Your Honor. The only—the only basis for our request for a stay is to allow the government to seek [37] appellate recourse—to consider seeking appellate course, which involves consultation with multiple agencies, as well as OC, a process that takes time. A week to seven days is an appropriate amount of time, but the reason for that is stated in our papers. Thank you.

THE COURT: Okay. I understand. Okay. And so, in order to determine whether a grant of stay is appropriate, and I listed this out earlier when I gave Petitioner's counsel the opportunity to respond or to address it in advance, the first prong is whether there has been a strong showing of likelihood to succeed on the merits, and based on my ruling in regards to Petitioner's high probability of succeeding on the merits, you have not met—or the government has not met the first prong.

Additionally, I find that there isn't any irreparable harm here by me ordering release. In making that finding, I'm saying—because there—there's no showing that he's a risk of flight or danger to the community, so he will be here and available to still continue his participation in his removal proceedings, which, from what I understand, are remote anyway.

Third, there does not appear to be any other parties interested in the proceedings that would be injured by the stay.

And fourth and finally, I find that his release is in the public interest in order to disrupt the chilling effect on protected speech.

And so I'm going to decline to stay my ruling pending [38] appeal. Exceptions are preserved. Is there anything further?

MS. GREGG: Yes, Your Honor. We would just like to discuss a little bit of the logistics, since this is an oral order given.

THE COURT: Well, I'll have a—I'm going to issue an order, a written order granting your motion.

MS. GREGG: I appreciate that, Your Honor.

THE COURT: Okay.

MS. GREGG: And I would just draw the Court's attention to issues that were presented in Ms. Ozturk's case when she was given an order that didn't specify exactly the conditions.

THE COURT: Okay.

MS. GREGG: Namely, that ICE—there was a large lag time between the ordering of her release and her actually being released because ICE attempted to put GPS monitoring on her.

THE COURT: Well, I've already—

MS. GREGG: Outside of—

THE COURT: Said that I was not going to—one of their requests here was the GPS monitoring, and I have refused that, because I said that it is not necessary here. You usually put that on when there's a flight risk, and I said there's no flight risk.

MS. GREGG: Of course, Your Honor. I agree with that, as well. I just wanted to make it clear that that is something that has come up in another case, and so that it—if the Court would [39] be willing to make that explicit in the written order, in case there are any issues in Prairieland, we have an attorney there waiting for the Court's decision here.

THE COURT: Okay.

MS. GREGG: And if the Court is amenable to any other clarifications to the order, we would ask that it make clear that he cannot be redetained or that he shouldn't be redetained by ICE without giving sufficient notice to the Court and to counsel so that we can look into the basis for redetention, given that he needs to travel from Prairieland to here, which would require him to go through TSA or make a long drive. Redetention under the current environment in this country is of concern for us, as well as to the issues that—redetention, which the government alluded to, and so we would just, you know, ask the Court—

THE COURT: Okay. You said could not be redetained without giving sufficient notice to the Court and counsel; 48 hours?

MS. GREGG: Yes, Your Honor, so that we can appear before the Court and have an opportunity to hear the government's reasoning.

THE COURT: Okay. Anything else?

MS. GREGG: That's all, Your Honor.

THE COURT: So no—explicitly state "no GPS monitoring," and then include this—you're requesting that the Court include this requirement that he not be redetained without notice to the [40] Court and counsel.

Mr. Byerley, do you want to be heard on these?

MR. BYERLEY: Your Honor, I would need to confer with my client based on the order. I don't want to say anything out of turn at this point without—

THE COURT: I understand that. I understand that. Okay. But just know I'm going to enter this order as requested. I find that reasonable, and so I am, but—I know you all will be taking all steps as soon as I leave the bench. So, if there's nothing—if there's nothing further, then we are adjourned.

(Proceedings adjourned at 12:07 p.m.)

CERTIFICATE

I, Scott L. Wallace, RDR-CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/	SCOTT L. WALLACE	5/15/25
	SCOTT L. WALLACE, RDR, CRR	**Date**
	Official Court Reporter	

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-1560

BADAR KHAN SURI, PETITIONER-APPELLEE

v.

DONALD TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; RUSSELL HOLT, IN HIS OFFICIAL CAPACITY AS FIELD OFFICE DIRECTOR OF WASHINGTON, IMMIGRATION AND CUSTOMS ENFORCEMENT; TODD LYONS, ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY; MARCO RUBIO, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; PAMELA BONDI, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, RESPONDENTS-APPELLANTS

AND

JEFFREY CRAWFORD, IN HIS OFFICIAL CAPACITY AS WARDEN OF FARMVILLE DETENTION CENTER, RESPONDENT

Filed: July 1, 2025

ORDER

WYNN, Circuit Judge:

Dr. Badar Khan Suri, who opposed the war in Gaza on social media, was detained by ICE after the government purportedly revoked his J-1 visa. The district court concluded that the government detained Suri in retaliation for his First Amendment activity, so it ordered his release pending the disposition of his habeas petition. The government moves us to stay the district court's order pending appeal, and in the alternative, petitions for mandamus.

We deny the government's requests.[1]

I.

A.

Suri is an Indian national who holds a Ph.D. in Peace and Conflict Studies. Mem. Supp. Mot. to Compel Return, Ex. 1, Decl. of Mapheze Saleh ("Saleh Decl.") ¶¶ 6, 8, *Suri v. Trump*, No. 1:25-cv-480 (E.D. Va. Mar. 20,

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[1] We are in full agreement with our distinguished colleague's recognition that "Mr. Suri has significant equitable factors in his favor," and that the "district court found that he presents neither a danger to the community nor a risk of flight," Dis. Op. at 27—both undeniably relevant considerations in any ruling on pretrial liberty. But therein lies the rub between us: our colleague would subordinate those weighty individual equities to what he characterizes as the specter of "severe systemic damage" resulting from "parallel adjudications" of a single removal question. *Id.*

We cannot so easily consign an individual's liberty to the concerns of bureaucratic tidiness. The Constitution does not yield to administrative convenience, and due process is not suspended merely because two courts may be asked similar questions. Simply stated, human rights do not cower before the speculative perils of duplicative litigation. So, our courts should not become sanctuaries for efficiency at the expense of justice.

2025), ECF No. 6-1. In 2022, Suri came to the United States on a J-1 exchange visa to study at Georgetown University, where he is now a post-doctoral scholar and teaches a class on minority rights in South Asia. *Id.* ¶ 10. He is married to Mapheze Saleh, a United States citizen. *Id.* ¶ 8.

Saleh consistently voiced opposition to the war in Gaza on social media; Suri did so on only a "handful of occasions." *Id.* ¶ 11; Am. Habeas Pet. ¶ 28, *Suri*, No. 1:25-cv-480 (E.D. Va. Apr. 8, 2025), ECF No. 34. The government asserts that, on March 15, 2025, Secretary of State Marco Rubio issued a secret memorandum—which has yet to be disclosed—purportedly finding that Suri's presence in the United States compromises American foreign policy interests. Mem. Supp. Mot. to Dismiss, Ex. 1, Decl. of Joseph Simon ("First Simon Decl.") ¶ 6, *Suri*, No. 1:25-cv-480 (E.D. Va. Apr. 1, 2025), ECF No. 26-1. The government later told Suri that it also revoked his visa, but it has not submitted evidence to that effect. Opp'n to Mot. to Dismiss, Ex. 1, Decl. of Badar Khan Suri ("Khan Suri Decl.") ¶ 4, *Suri*, No. 1:25-cv-480 (E.D. Va. April 15, 2025), ECF No. 47-1.

At around 9:30 p.m.[2] on March 17, ICE arrested Suri outside of his apartment in Rosslyn, Virginia. *Id.* ¶ 2. When Suri called Saleh downstairs, the officers told her and Suri that Suri would be taken to Chantilly, Virginia. *Id.* ¶ 6. They transported him to the ICE Field Office in Chantilly. *Id.* ¶ 9. At that location, officers presented Suri with a Notice to Appear that incorrectly listed a Texas address as his current residence and listed a hearing date of May 6 at an immigration court in Texas. *Id.*

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[2] All times are provided in Eastern Daylight Time.

¶ 19; First Simon Decl., Ex. 1, Notice to Appear ("NTA") at 6.

When Suri asked about the Texas address, an officer explained him that "it was just computer generated, and it might be changed later on." Khan Suri Decl. ¶ 9. An officer told Suri he would be transferred to Farmville, Virginia, and permitted him to call his wife. Khan Suri Decl. ¶ 12-13. Suri arrived at the Farmville Detention Center around 2:30 a.m. on March 18. First Simon Decl. ¶ 10; Khan Suri Decl. ¶¶ 12-14. ICE soon transferred him to Richmond, Virginia, where he arrived at 7:50 a.m.[3] First Simon Decl. ¶ 11; Khan Suri Decl. ¶ 15.

Later on March 18, without informing Suri of his destination and while denying his request to call his wife, government agents transported him to the airport and placed him on a flight departing for Louisiana at 2:47 p.m. First Simon Decl. ¶ 11; Khan Suri Decl. ¶ 15-17. Suri arrived in Alexandria, Louisiana, at 5:03 p.m. that same day, where he was booked into the detention facility at 6:42 p.m. First Simon Decl. ¶ 11; Reply to Mot. to Dismiss, Ex. 1, Second Declaration of Joseph Simon ("Second Simon Decl.") ¶ 3, *Suri*, No. 1:25-cv-480 (E.D. Va. Apr. 21, 2025), ECF No. 49-1. The government claims that it moved Suri from Virginia due to "potential overcrowding in Virginia detention facilities." First Simon Decl. ¶ 8.

Meanwhile, at 10:42 p.m. on March 17, while Suri was being processed at the ICE office in Chantilly, attorney Hassan Ahmad learned of his arrest. Mem. Supp. Mot. to Release, Ex. 1, Decl. of Hassan Ahmad ("Ahmad

[3] Rosslyn, Chantilly, Richmond, and the Farmville Detention Center are located in the Eastern District of Virginia.

Decl.") ¶¶ 1, 3, *Suri*, No. 1:25-cv-480 (E.D. Va. Mar. 27, 2025), ECF No. 21-1. On March 18, Ahmad agreed with Saleh to represent Suri, and immediately began drafting a habeas petition. *Id.* ¶ 8.

At that point, Suri's last communication with the outside world had been the night before, when he told his wife that he was being brought to Farmville. Ahmad checked ICE's online detainee locator on March 18, but Suri hadn't yet appeared on that system. *Id.* ¶ 9. Based on that absence—and Suri's final communication—Ahmad and Saleh reasonably believed that he was still in Virginia.

That same afternoon, Ahmad entered his appearance in Suri's immigration proceeding and was permitted to view Suri's Notice to Appear, which incorrectly listed a Texas address as Suri's current residence. *Id.* ¶ 7. Given the information relayed by Suri to Saleh, Ahmad believed that Suri was still "detained in Virginia." *Id.* ¶ 8. At 5:59 p.m. on March 18—after Suri had landed in Louisiana, but before he was booked into the detention facility there—Ahmad filed Suri's habeas petition in the Eastern District of Virginia. Habeas Pet., *Suri*, No. 1:25-cv-480 (E.D. Va. Mar. 18, 2025), ECF No. 1.

Suri was detained in Louisiana for three nights. First Simon Decl. ¶ 12; Khan Suri Decl. ¶ 18-22. It was not until March 19 that Suri appeared on the ICE online detainee locator and Ahmad learned his location. Ahmad Decl. ¶ 9.

On March 20, Suri was told he would be transferred to New York the following day, which he believed meant that he would be deported. Khan Suri Decl. ¶ 21. On that day, the district court ordered the government not to remove Suri from the United States. *Suri v. Trump*

(*Suri I*), No. 1:25-cv-480, 2025 WL 914757, at *1 (E.D. Va. Mar. 20, 2025). On March 21, Suri was told that he would instead be driven to Texas. Khan Suri Decl. ¶ 22. ICE drove him to the Prairieland Detention Center in Texas, where he arrived on the evening of March 21. Second Simon Decl. ¶ 3; Khan Suri Decl. ¶ 22. Suri was held there until May 14 when the district court ordered him returned to his family and released. *Suri v. Trump* (*Suri III*), No. 1:25-cv-480, 2025 WL 1392143, at *1 (E.D. Va. May 14, 2025); Response Br. at 4.

B.

Ahmad filed Suri's habeas petition in the Eastern District of Virginia on March 18, naming Attorney General Pamela Bondi and others as Suri's custodians. *See* Habeas Pet. The petition alleged that Suri's detention was in retaliation for his protected First Amendment activity, and it requested that the district court order his release. *Id.* at 1, 16. On March 20, pursuant to the All Writs Act, the district court ordered "that [Suri] shall not be removed from the United States unless and until the Court issues a contrary order." *Suri I*, 2025 WL 914757, at *1.

The government moved to dismiss or in the alternative to transfer venue, arguing that the district court lacked habeas jurisdiction because Suri wasn't physically present in the Eastern District of Virginia when his petition was filed, and that the Northern District of Texas was the proper venue because Suri was on his way there at the time of filing. Mem. Supp. Mot. to Dismiss at 11, *Suri*, No. 1:25-cv-480 (E.D. Va. Apr. 1, 2025), ECF No. 26. The district court held a hearing on the issue of habeas jurisdiction, and on May 6, it denied the government's motion. *Suri v. Trump* (*Suri II*), No. 1:25-cv-

480, 2025 WL 1310745, at *14 (E.D. Va. May 6, 2025). Although it recognized that habeas petitions generally must be filed in the district of confinement, it found persuasive a 2004 concurrence from Justice Kennedy in which he wrote that

> if there is an indication that the Government's purpose in removing a prisoner were to make it difficult for his lawyer to know where the habeas petition should be filed, or where the Government was not forthcoming with respect to the identity of the custodian and the place of detention. . . . habeas jurisdiction would be in the district court from whose territory the petitioner had been removed.

Id. at *5 (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 454 (2004) (Kennedy, J., concurring)).

The district court found that the government's purported reason for spiriting Suri away—overcrowding in the Virginia facilities—was "riddled with inconsistencies" and "undermined by the fact that Prairieland Detention Center, where petitioner is currently held, is overcrowded. . . . It is uncontroverted that Dr. Khan Suri was placed in a dormitory that has a 36-person capacity but has been filled with at least 50 people since he arrived." *Id.* at *11. Therefore, "it appears that Respondents' goal in moving Petitioner was to make it difficult for Petitioner's counsel to file the petition and to transfer him to the Government's chosen forum." *Id.*

On May 14, after another hearing, the court granted Suri's motion to return him to Virginia and to release him, concluding that Suri was detained in retaliation for protected speech and association. *Suri III*, 2025 WL 1392143, at *1. It rejected the government's argument that several provisions of the immigration code preclude habeas relief. Mot. Ex. H at 24-26 (Transcript of Bond Hearing). And it found that Suri was entitled to bail because there was "no credible evidence supporting that he is a danger to the community" and that his release was necessary to "disrupt the chilling effect of retaliation." *Id.* at 35. The government moved the district court to stay its order pending appeal, *id.* at 36, and the district court denied the motion, *id.* at 37.

The government appealed the March 20 order not to remove Suri and the May 14 order to release him. It now moves this Court for a stay of the release order pending appeal and petitions for mandamus. Mot. at 6, 20.

II.

We consider four factors when weighing a motion to stay: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). "The party requesting a stay"—here, the government—"bears the burden of showing that the circumstances justify an exercise of [the Court's] discretion." *Nken v. Holder*, 556 U.S. 418, 433-34 (2009).

The government doesn't contest the district court's finding that it detained Suri in retaliation for his First Amendment activity. Instead, it makes two jurisdictional arguments: that the district court lacked jurisdiction because Suri was physically present in Louisiana when his habeas petition was filed, and that various provisions of the immigration code prohibit the district court from exercising subject-matter jurisdiction over Suri's habeas petition. The government is unlikely to succeed on the merits of either argument. Furthermore, the equities lie firmly in Suri's favor.

We therefore deny the government's motion.

A.

First, the government contends that the district court, sitting in the Eastern District of Virginia, lacked habeas jurisdiction because Suri wasn't physically present in that district at the time of filing.[4] Mot. at 7. (He had landed in Louisiana less than an hour earlier.) The government has not shown a strong likelihood of success on this argument.

Certainly, 28 U.S.C. § 2241 provides district courts authority to grant writs of habeas corpus "within their respective jurisdictions." The Supreme Court has held that "[t]he plain language of the habeas statute thus confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction

[4] The government is unclear where Suri should have filed instead. It argued to the district court that if it did not dismiss the case, it should transfer it to the Northern District of Texas. Mot. to Dismiss at 14. But transfers are only permissible to "a district where [a case] could have been brought." 28 U.S.C. § 1406(a). There is absolutely no reason to think, and the government points to no case indicating, that a habeas petition challenging present confinement could be filed in a district to which a petitioner had not yet been. Only begrudgingly, and in the alternative, did the government argue that a transfer to the Western District of Louisiana might be permissible under "out-of-circuit" precedent. Mot. to Dismiss at 14. On appeal, the government reiterates that Suri should have filed in "either the Northern District of Texas . . . or the Western District of Louisiana." Mot. at 7.

lies in only one district: the district of confinement." *Padilla*, 542 U.S. at 443. And because "[b]y definition, the immediate custodian and the prisoner reside in the same district," the Court generally requires petitioners to name "some person who has the *immediate custody* of the party detained" rather than "the Attorney General or some other remote supervisory official." *Id.* at 435, 444 (quoting *Wales v. Whitney*, 114 U.S. 564, 574 (1885)).

However, these "default" rules are not absolute. *Id.* at 435. When a detainee is held in a secret location, their attorneys "cannot be expected to file in the jurisdiction where [they are] held" as it "is impracticable to require the attorneys to file in every jurisdiction." *Demjanjuk v. Meese*, 784 F.2d 1114, 1116 (D.C. Cir. 1986) (Bork, J., in chambers) (allowing suspected war criminal held in confidential location to file a habeas petition in the D.C. Circuit). Yet "it is essential that [the] petitioner not be denied the right to petition for a writ of habeas corpus." *Id.* The Supreme Court thus recognized an exception in *Rumsfeld v. Padilla*, writing that when "a prisoner is held in an undisclosed location by an unknown custodian, it is impossible to apply the immediate custodian and district of confinement rules." 542 U.S. at 450 n.18 (citing *Demjanjuk*, 784 F.2d at 1116).

Although it also encompasses a "district of confinement" exception, *id.* at 450 n. 18, courts refer to this as the "unknown custodian exception," *see, e.g.*, *Khalil v. Joyce*, No. 25-cv-01963, 2025 WL 972959, at *28 (D.N.J. Apr. 1, 2025), *mot. to certify appeal granted*, No. 25-cv-01963, 2025 WL 1019658 (D.N.J. Apr. 4, 2025). We applied that exception in *United States v. Moussaoui*, 382 F.3d 453 (4th Cir. 2004), albeit not in a challenge to present confinement. When a suspected terrorist filed a writ of habeas corpus ad testificandum to require the testimony of several "enemy combatant witnesses" who were in U.S. military custody, we held that "the writ is properly served on the prisoner's ultimate custodian" because "the immediate custodian is unknown." *Id.* at 465 (first citing *Demjanjuk*, 784 F.2d at 1116; and then citing *Padilla*, 542 U.S. at 450 n.18).

The unknown-custodian exception is critical because a detainee must always have an available forum for a habeas petition, even if the government doesn't disclose their location. As Blackstone put it, "the king is at all times [e]ntitled to have an account, why the liberty of any of his subjects is restrained, wherever that restraint may be inflicted." 3 William Blackstone, *Commentaries* *131. Put another way, "there is no gap in the fabric of habeas—no place, no moment, where a person held in custody in the United States cannot call on a court to hear his case and decide it." *Khalil*, 2025 WL 972959, at *37. Challenges to present confinement, such as Suri's, "fall within the 'core' of the writ of habeas corpus." *Trump v. J. G. G.*, 145 S. Ct. 1003, 1005 (2025) (quoting *Nance v. Ward*, 597 U.S. 159, 167 (2022)). And "absent suspension, the writ of habeas corpus remains available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004).

This case is a prime example for why the unknown-custodian exception exists. After detaining Suri, ICE officers told him that he would be taken to Farmville, Virginia, and allowed him to inform his wife of that fact. Khan Suri Decl. ¶ 12-13. But ICE took Suri to Farmville for only a few hours before driving him to Richmond, Virginia, and then flying him to Louisiana—while denying his request to tell his wife of these developments. *See* First Simon Decl. ¶ 11; Khan Suri Decl. ¶ 15-17.

The government does not contest the district court's finding that it used these tactics to shop for a forum it perceived as more favorable and to make it difficult for Suri's attorney to file a habeas petition on his behalf.[5] *Suri II*, 2025 WL 1310745, at *11. Further, the ICE online detainee tracker did not show Suri's location until the day after his petition was filed. Ahmad Decl. ¶ 9. Under those circumstances, no "diligent attorney could have known that [Suri] was in Louisiana at the time [his attorney] filed the petition." *Suri II*, 2025 WL 1310745, at *8.

The government also doesn't contest the district court's finding that it apparently intended to deport Suri on March 21—meaning that the district court's order forbidding the government from doing so came with just hours to spare. *See id.* at *4. Without that order, Suri may well have been deported without the reasonable notice and opportunity for judicial review that "all nine Justices agree[]" is due. *A. A. R. P. v. Trump*, 145 S. Ct. 1364, 1368 (2025) (citing *J. G. G.*, 145 S. Ct. at 1006). If there is little case law applying the unknown-custodian exception, that is because the government has rarely resorted to such tactics in the past.

Furthermore, even had Suri's attorney known that Suri was in Louisiana, it still wouldn't have been possible to file there. Given the government's repeated fail-

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[5] The government argued to the district court that it moved Suri due to overcrowding concerns, but, as the district court noted, it transferred him from a facility with available beds to an overcrowded facility where he was forced to sleep on a plastic cot on the floor. *Suri II*, 2025 WL 1310745, at *11.

ure to identify Suri's immediate custodian at the time of filing—despite multiple entreaties—the district court found that Suri had no immediate custodian at that time. *Suri II*, 2025 WL 1310745, at *8. We agree with the district court. For the first time in its reply brief on appeal, the government lamely contends that Suri was "awaiting check-in" at the Alexandria Staging Facility in Louisiana when his petition was filed, so his immediate custodian was the director of that facility. Reply Br. at 6-7. But the government's only evidence for this assertion is a declaration claiming that Suri was "recorded as booked into the Alexandria Staging Facility shortly after at 6:42 p.m."—forty-three minutes *after* his petition was filed. *Id.* at 6 (citing Reply Br. Ex. A, at ¶¶ 15-16). This reinforces the conclusion that if Suri wasn't allowed to file in the Eastern District of Virginia, he couldn't have filed anywhere.

We thus cannot agree that the district court lacked habeas jurisdiction to intervene. "The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected." *Harris v. Nelson*, 394 U.S. 286, 291 (1969). So, if the government moves a detainee from a district and their attorney cannot discover their location with reasonable inquiry, that attorney must be able to file a habeas petition in the detainee's last-known location against their ultimate custodian. Otherwise, that detainee would lack the ability to seek habeas relief as long as the government kept their location and custodian a secret, thus granting "the political branches . . . the power to switch the Constitution on or off at will," "leading to a regime in which . . . the President, not th[e Supreme] Court, say[s] 'what the law is.'" *Boumediene v. Bush*, 553 U.S. 723, 765 (2008) (quoting *Marbury v Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)).

The government protests that the unknown-custodian exception applies only "where one's detention is a *prolonged* secret." Mot. at 10 (emphasis added). The only authority it cites for this proposition is *Demjanjuk*, which says no such thing. *Id.* (citing 784 F.2d at 1116). Neither does *Padilla*. 542 U.S. at 450 n.18. Nor *Moussaoui*. 382 F.3d at 465.

Here, had the Eastern District of Virginia not intervened, the government apparently would have deported Suri long before a "prolonged" period elapsed. *See Suri II*, 2025 WL 1310745, at *4. Indeed, recently, the government has provided some detainees just hours of notice before attempting to deport them. *See A. A. R. P.*, 145 S. Ct. at 1368. It has also argued that, once a detainee is deported, it is powerless to secure their return —even if they never received the ability to defend themselves, and even if their deportation was in error. *Id.* (citing Decl. of Joseph N. Mazzara, *Abrego Garcia v. Noem*, No. 8:25-cv-951 (D. Md. Apr. 15, 2015), ECF No. 77). Amid these circumstances, even temporary lapses in the protections of habeas corpus could result in a detainee's deportation without judicial review. Yet, "[t]he test for determining the scope of [the writ of habeas corpus] must not be subject to manipulation by those whose power it is designed to restrain." *Boumediene*, 553 U.S. at 765-66. We will not require attorneys to wait to file a habeas petition until a "prolonged" period has elapsed or the government sees fit to reveal their client's location. At that point, it might be too late.

In sum, the unknown-custodian exception squarely applies here. At the time of filing, Suri was undisputedly held in an undisclosed location by an unknown custodian. Despite his best efforts, Suri's attorney had no way of knowing where Suri was or who held immediate custody over him. *Suri II*, 2025 WL 1310745, at *8. Jurisdiction is therefore proper in Suri's last-known location, and the only place his attorney reasonably could have filed a petition: the Eastern District of Virginia.[6]

B.

Next, the government contends that the immigration code deprived the district court of jurisdiction over Suri's habeas petition. The government has not made a strong showing that this argument is likely to succeed.

To the contrary, the Supreme Court instructs that we should "take account . . . of the presumption favoring interpretations of statutes [to] allow judicial review . . . absent clear statement." *Kucana v. Holder*, 558 U.S.

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[6] As an alternative basis for our conclusion, we adopt Justice Kennedy's reasoning from his concurrence in *Padilla*, which the First Circuit anticipated in its 2000 decision in *Vasquez v. Reno*. *Padilla*, 542 U.S. at 454 (Kennedy, J., concurring) (where "there is an indication that the Government's purpose in removing a prisoner were to make it difficult for his lawyer to know where the habeas petition should be filed, or where the Government was not forthcoming with respect to the identity of the custodian and the place of detention . . . habeas jurisdiction would be in the district court from whose territory the petitioner had been removed"); *see Vasquez v. Reno*, 233 F.3d 688, 696 (1st Cir. 2000) (the default habeas rules do not apply if the government "spirited an alien from one site to another in an attempt to manipulate jurisdiction"). That is precisely the situation here: the government doesn't contest the district court's finding that it removed Suri from the Eastern District of Virginia in part "to make it difficult for Petitioner's counsel to file the petition." *Suri II*, 2025 WL 1310745, at *11. Jurisdiction is therefore proper in that district.

233, 237 (2010) (quotation marks and citation omitted). We see no indication at all that Congress intended to strip district courts of jurisdiction over habeas challenges to unconstitutional immigration detention.

As an initial matter, the government moves to stay only the district court's May 14 order to release Suri. Mot. at 6 ("This Court Should Stay the District Court's Order Releasing Suri."). The district court's other orders, and Suri's other prayers for relief, are not at issue here. "So long as part of [Suri's] challenge to his detention falls outside of [the immigration code's jurisdiction-stripping provisions], his petition survives, as does the district court's authority to order his release." *Mahdawi v. Trump*, 136 F.4th 443, 450 n.3 (2d Cir. 2025). Therefore, all we must determine is whether the district court had authority to order Suri's release from detention.

The first provision the government points to is 8 U.S.C. § 1252(g), which provides that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." The government argues that Suri's challenge arises from a decision "to commence removal proceedings," so he must bring his challenges in the normal course of immigration proceedings. Mot. at 11. Our dissenting colleague agrees. Dis. Op. at 25-26.

This argument stretches § 1252(g) beyond its text in direct contravention of Supreme Court precedent. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court specifically rejected the idea that § 1252(g) stripped federal courts of jurisdiction over habeas challenges to present immigration confinement. *Id.* at 688. The Supreme Court has elsewhere described § 1252(g) as "narrow[]" and directed "against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion." *Reno v. Am.-Arab Anti-Discrimination Comm.* (*AADC*), 525 U.S. 471, 482, 485 n.9 (1999). This bar on judicial review is thus cabined "to three discrete actions": a decision "to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Id.* at 482 (quoting 8 U.S.C. § 1252(g)). The Supreme Court has accordingly "rejected as 'implausible' the Government's suggestion that § 1252(g) covers 'all claims arising from deportation proceedings' or imposes 'a general jurisdictional limitation.'" *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020) (quoting *AADC*, 525 U.S. at 482).

Because § 1252(g) simply doesn't extend to habeas challenges to present immigration confinement, courts routinely exercise jurisdiction over such challenges. For example, the Supreme Court granted a habeas petition challenging present immigration confinement in *Clark v. Martinez*, 543 U.S. 371, 386-87 (2005). In *Castaneda v. Perry*, 95 F.4th 750 (4th Cir. 2024), we exercised jurisdiction over a habeas challenge to present immigration confinement, though we denied it on the merits. *Id.* at 762. In a scenario materially identical to Suri's, the Second Circuit rejected the government's argument that § 1252(g) precluded a district court's jurisdiction because the habeas petitioner's "claims of unlawful and retaliatory detention are independent of, and collateral to, the removal process," so the petitioner's "detention does not arise from the government's 'commence[ment of] proceedings.'" *Öztürk v. Hyde*, 136 F.4th 382, 397-98 (2d Cir. 2025) (quoting *AADC*, 525 U.S. at 482).

And, were there any remaining doubt, the Supreme Court recently reaffirmed that challenges to present immigration confinement "fall within the 'core' of the writ of habeas corpus." *J. G. G.*, 145 S. Ct. at 1005 (quoting *Nance*, 597 U.S. at 167).

Under the government's (and the dissent's) sweeping interpretation of § 1252(g), each of those courts lacked jurisdiction over habeas challenges to present confinement. That view contravenes *Zadvydas* and reads into § 1252(g) precisely the kind of "general jurisdictional limitation" that the Supreme Court "rejected as 'implausible.'" *Regents of the Univ. of Cal.*, 591 U.S. at 19 (quoting *AADC*, 525 U.S. at 482). And in contrast to this uniform body of case law, neither the government nor the dissent points to a single case holding that § 1252(g) strips jurisdiction over habeas challenges to present confinement. The government contends that the Supreme Court's decision in *Reno v. AADC* "barred claims strikingly similar to those brought here." Mot. at 14 (citing 525 U.S. at 487-92). But unlike Suri, the *AADC* petitioners sought "to prevent the initiation of deportation proceedings," and therefore fell squarely within the statute's scope. *AADC*, 525 U.S. at 474. "The habeas claims in that case did not sound in unlawful *detention* at all, and it is therefore of no help to the government." *Öztürk*, 136 F.4th at 398. For the same reason, the dissent's citation to *Johnson v. Whitehead*, 647 F.3d 120 (4th Cir. 2011), is unavailing. That case involved a habeas petitioner's attempt to "have [the Department of Homeland Security] forever precluded from seeking his removal," rather than a challenge to present confinement. *Id.* at 123.

Here, the district court's May 14 order—which is the only order that the government moves to stay—required the government to release Suri from detention. *Suri v. Trump*, No. 1:25-cv-480, 2025 WL 1392143, at *1 (E.D. Va. May 14, 2025). It did not interfere with the decision to commence removal proceedings against him; in fact, the district court specifically required Suri to "participate in his removal proceedings" as a condition of his release. *Id.* The May 14 order therefore falls outside § 1252(g)'s scope.

Nor are the normal course of immigration proceedings sufficient for Suri to obtain his requested habeas relief. *Contra* Dis. Op. at 23-24. The district court concluded—and the government *does not contest*—that ICE unconstitutionally *detained* Suri in retaliation for posting on social media in opposition to the war in Gaza and for his familial associations, so it ordered his immediate release. Mot. Ex. H, at 35. Absent habeas relief, an immigration detainee can generally seek judicial review of a final order of removal—but the court would be powerless to remedy any unconstitutional detention that had already occurred. That is why we have habeas proceedings in the first place. *See* 28 U.S.C. § 2241 (granting federal courts habeas jurisdiction for challenges to "custody in violation of the Constitution"); *see Johnson v. Rogers*, 917 F.2d 1283, 1284 (10th Cir. 1990) ("[W]rits of habeas corpus are intended to afford a swift and imperative remedy in all cases of illegal restraint or confinement."). We thus cannot "sanction the abrogation of habeas corpus . . . in the manner attempted here." *Abrego Garcia v. Noem*, No. 25-1404, 2025 WL 1135112, at *2 (4th Cir. Apr. 17, 2025).

Beyond its lack of statutory basis, the dissent's concern over "unsustainable litigiousness" is overblown. Dis. Op. at 23. As discussed, there is nothing novel about immigration detainees filing habeas petitions challenging their present confinement. We expect that in the ordinary course, the government will have no difficulty justifying a noncitizen's confinement pending removal proceedings and answering any allegations of unconstitutional detention. Here, the government has done neither. In any event, the alternative—permitting the government to unconstitutionally detain noncitizens on trumped-up charges with little or no evidence and leaving them to await the outcome of removal proceedings—presents a far greater risk of "severe systemic damage." *Id.* at 27.

The government next points to 8 U.S.C. § 1252(a)(5) and (b).[7] Mot. at 15. Section 1252(b) provides that, "[w]ith respect to review of an order of removal," any question "arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section." Section 1252(a)(5) provides that procedure, granting courts of appeals exclusive jurisdiction over "judicial review of an order of removal entered or issued under any provision of this chapter." The government argues that these provisions work together to strip district courts of habeas jurisdiction over "decisions to detain for purposes of removal or for removal proceedings" because they are "inextricably

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[7] The government cites (b)(9) in particular, Mot. at 15, but we cannot analyze (b)(9) without reference to the limiting language in (b).

intertwined with the final order of removal that precedes issuance of any removal order." Mot. at 19.

On their face, these provisions apply only to challenges to an "order of removal." There is no such order here, so these provisions don't apply. *See Öztürk*, 136 F.4th at 399 (rejecting the government's argument because "[n]o such order of removal is at issue here").

We therefore conclude that the government has not shown a strong likelihood of success on either of the arguments in its stay motion.

C.

The other stay factors also weigh strongly against our intervention at this preliminary stage.

The government argues that it "suffers a form of irreparable injury" "[a]ny time [it] is enjoined by a court from effectuating statutes enacted by representatives of its people." Mot. at 19 (quoting *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)). But it fails to explain why releasing Suri prevents it from enforcing the immigration statutes. It is still free to pursue an order of removal through the normal process—indeed, the district court required Suri to "participate in his removal proceedings" as a condition of his release. *Suri III*, 2025 WL 1392143, at *2.

Furthermore, the equities and the public interest lie firmly in Suri's favor. The government doesn't contest the district court's finding that it detained Suri in retaliation for his First Amendment activity. Motion Ex. H, at 30. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). A stay here would allow the government to immediately re-detain Suri, which would further chill speech protected by the First Amendment.

Finally, the government's apparent "goal in moving [Suri] was to make it difficult for [his] counsel to file the petition and to transfer him to the Government's chosen forum." *Suri II*, 2025 WL 1310745, at *11. "[A] stay of a lower-court decision is an equitable remedy. It should not be given if the moving party has not acted equitably, and that is the situation here." *Danco Lab'ys, LLC v. All. for Hippocratic Med.*, 143 S. Ct. 1075, 1076 (2023) (Alito, J., dissenting from grant of application for stays).

III.

The government alternatively requests that we issue a writ of mandamus "because the district court's order amounts to a judicial usurpation of the Executive's exclusive statutory powers and preeminent constitutional powers over immigration." Mot. at 21. But, aside from this heated rhetoric, the government's only substantive argument is that the district court lacked jurisdiction over Suri's habeas petition. In considering a petition for mandamus, "appellate courts are reluctant to interfere with the decision of a lower court on jurisdictional questions which it was competent to decide and which are reviewable in the regular course of appeal." *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 26 (1943). And regardless, we conclude that the district court did possess habeas jurisdiction. We therefore decline to order the "drastic and extraordinary remed[y]" of mandamus. *Ex parte Fahey*, 332 U.S. 258, 259 (1947).

IV.

In sum, the sequence of events here underscores a critical point: jurisdiction in this matter was neither speculative nor opportunistic. Instead, it was based on the only information available to the petitioner and his counsel, because the government chose to move Suri without informing his wife or attorney of his location or custodian. If not for our conclusion that jurisdiction lies in the Eastern District of Virginia, that deliberate choice would have deprived the petitioner of any meaningful opportunity to contest his detention prior to removal to a distant jurisdiction.

Such conduct raises serious concerns. To allow the government to undermine habeas jurisdiction by moving detainees without notice or accountability reduces the writ of habeas corpus to a game of jurisdictional hide-and-seek.

Because the government has not demonstrated that it is entitled to preliminary relief, we deny its motion for stay pending appeal and its petition for mandamus.

Entered at the direction of Judge Wynn with the concurrence of Judge Benjamin. Judge Wilkinson filed a dissenting opinion.

FOR THE COURT

/s/ NWAMAKA ANOWI, Clerk
NWAMAKA ANOWI

WILKINSON, Circuit Judge, dissenting:

As the majority opinion reveals, this case has a perfectly confusing core. Questions abound: Who was where, and why? Who knew what, and when? When the fog lifts, however, a crystal clear inquiry emerges: Are federal habeas proceedings, valued as they are, intended as a means of circumventing the usual immigration process?

I do not believe they were meant to serve this function. If they were, the parties would face largely duplicative proceedings over the same issues, one before an immigration judge and another before a federal district court judge. I am reluctant to take this first step towards such unsustainable litigiousness. While I do not make light of the difficulties that have led my good colleagues to a different answer, I would grant the government's motion for a stay pending appeal. Anything else would presage a perennial clash of rulings and orders between two different sets of federal tribunals.

I.

Mr. Suri has filed a habeas petition in the Eastern District of Virginia challenging his detention during the pendency of deportation proceedings in Texas. Stripped to their essentials, both proceedings seek to determine the same underlying question of Mr. Suri's removability. Indeed, his arguments against detention are substantially the same as his arguments against his attempted removal. As the majority notes, he asserts that both are acts of "retaliation for his protected First Amendment activity." Maj. Op. at 6.

This would be a different case if the procedures afforded to Mr. Suri in his deportation proceedings were constitutionally insufficient. I am not persuaded, however, that factfinding by an Immigration Judge and review by the Board of Immigration Appeals, with possible judicial review of an order of removal, render the process so deficient in fairness that it should be displaced by habeas proceedings.

This would also be a different case if the deportation proceedings did not afford Mr. Suri the opportunity to be heard on his constitutional claims. But neither Mr. Suri nor the majority appear to contest that judicial review of an order of removal, if one is entered, will extend to the essential constitutional questions. *See* 8 U.S.C. § 1252(b)(9) (providing that judicial review of a final removal order shall encompass "all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien"). Although the factual record may be more limited than it would be in the district court, due process does not require that all constitutional claims be entertained in identical circumstances. *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) ("Due process is flexible, and calls for such procedural protections as the particular situation demands.").

Allowing both proceedings to move forward thus presents the government with the prospect of having to defend against the same constitutional arguments in two different forums. It will face, in essence, a double burden of proof here and in many a removal case. This is a prescription for "the deconstruction, fragmentation, and hence prolongation of removal proceedings" at odds with the express wishes of Congress and the Supreme Court to achieve at least a modest measure of clarity and expedition in immigration enforcement. *Reno v. Am.-Arab Anti-Discrimination Comm. (AADC)*, 525 U.S. 471, 487 (1999).

II.

It is no answer to say that, when there is a conflict of this sort, the habeas proceeding should invariably take precedence. I fear that it will be too easy a matter to extract from the majority's rhetoric such an open habeas availability rule. Habeas is a hallowed vehicle for challenging confinement and "an integral part of our common law heritage." *Preiser v. Rodriguez*, 411 U.S. 475, 485 (1973). The habeas rules, however, were not developed over the centuries with an eye toward immigration proceedings, whereas the Immigration and Nationality Act (INA) was drafted with such proceedings solely in mind. In other words, the INA is more specific and on point. And a specific, on point statute may divest courts of jurisdiction even over claims at the "core" of the Great Writ. Maj. Op. at 17; *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015) ("The power of federal courts to enjoin unlawful executive action is subject to . . . statutory limitations."); *Johnson v. Whitehead*, 647 F.3d 120, 124 (4th Cir. 2011) ("Congress has specifically prohibited the use of habeas corpus petitions as a way of obtaining review of questions arising in removal proceedings.").

Indeed, the INA divests courts of habeas jurisdiction over claims "arising from" the government's decision to "commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g). The clarity and force of this provision limits the hair-breadth distinctions that the majority would have us draw. *See* Maj. Op. at 16-17. In my view, when the government detains an alien under § 1226(a)—which authorizes detention "pending a decision on whether the alien is to be removed"—the detention arises from the commencement of proceedings or adjudication of cases. As a result, the government's decision to detain is one of the "discretionary determinations" that the INA provides "some measure of protection" from judicial intervention. *AADC*, 525 U.S. at 485. Although the majority writes that a different outcome is dictated by *Zadvydas*, that case is inapposite because it concerned a challenge to the government's authority to indefinitely detain, not the government's discretionary *decision* to detain under the circumstances here. *See* Maj. Op. at 16; *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).

The government is thus not wrong to suggest that the habeas proceeding here should step aside. The opposite result will convert the habeas proceeding into a vehicle for collateral attacks on the deportation proceeding, requiring the courts to resolve a host of complex, fact-bound jurisdictional questions. The majority's lengthy discussions in this case concerning the district of confinement rule, the immediate custodian rule, and the unknown custodian exception offer but a foretaste of the confusion lying in wait for the majority's decision. *See* Maj. Op. at 8-14. Direct appeals are often thought a more desirable route to justice than collateral attacks, and lengthy collateral attacks on ongoing rather than completed proceedings seem less desirable still.

III.

The parties are far apart in their general perceptions. The government would have too little litigation while those resisting deportation wish to have too much. Each position in its absolute form has serious infirmities. Too little litigation strips those facing vast dislocations in their lives and personal relationships of their basic right to due process of law. But too much litigation brings no end to legal entanglements and delays, undermining the prosecutorial discretion that is core to the government's legitimate claims of sovereignty.

I do respect and acknowledge the fact that Mr. Suri has significant equitable factors in his favor. The district court found that he presents neither a danger to the community nor a risk of flight, which are both important considerations in rulings on pretrial release and bond pending appeal. Hr'g Tr., May 14, 2025, at 34-35. Yet the government's jurisdictional arguments with regard to the INA are not without considerable force, and they weigh against Mr. Suri's likelihood of success on the merits of the appeal. *See Nken v. Holder*, 556 U.S. 418, 434 (2009) (describing the likelihood of success inquiry as more important than the balancing of the equities).

Ultimately, the severe systemic damage that would result from allowing parallel adjudications upon the same essential question of Mr. Suri's removability persuades me, with all respect to my fine colleagues, that we should grant the government's motion for a stay pending this appeal.

APPENDIX F

8 U.S.C. 1252 provides in pertinent part:

Judicial review of orders of removal

* * * * *

(b) Requirements for review of orders of removal

With respect to review of an order of removal under subsection (a)(1), the following requirements apply:

(1) Deadline

The petition for review must be filed not later than 30 days after the date of the final order of removal.

(2) Venue and forms

The petition for review shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings. The record and briefs do not have to be printed. The court of appeals shall review the proceeding on a typewritten record and on typewritten briefs.

(3) Service

(A) In general

The respondent is the Attorney General. The petition shall be served on the Attorney General and on the officer or employee of the Service in charge of the Service district in which the final order of removal under section 1229a of this title was entered.

(B) Stay of order

Service of the petition on the officer or employee does not stay the removal of an alien pending the court's decision on the petition, unless the court orders otherwise.

(C) Alien's brief

The alien shall serve and file a brief in connection with a petition for judicial review not later than 40 days after the date on which the administrative record is available, and may serve and file a reply brief not later than 14 days after service of the brief of the Attorney General, and the court may not extend these deadlines except upon motion for good cause shown. If an alien fails to file a brief within the time provided in this paragraph, the court shall dismiss the appeal unless a manifest injustice would result.

(4) Scope and standard for review

Except as provided in paragraph (5)(B)—

(A) the court of appeals shall decide the petition only on the administrative record on which the order of removal is based,

(B) the administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary,

(C) a decision that an alien is not eligible for admission to the United States is conclusive unless manifestly contrary to law, and

(D) the Attorney General's discretionary judgment whether to grant relief under section

1158(a) of this title shall be conclusive unless manifestly contrary to the law and an abuse of discretion.

No court shall reverse a determination made by a trier of fact with respect to the availability of corroborating evidence, as described in section 1158(b)(1)(B), 1229a(c)(4)(B), or 1231(b)(3)(C) of this title, unless the court finds, pursuant to subsection (b)(4)(B), that a reasonable trier of fact is compelled to conclude that such corroborating evidence is unavailable.

(5) Treatment of nationality claims

(A) Court determination if no issue of fact

If the petitioner claims to be a national of the United States and the court of appeals finds from the pleadings and affidavits that no genuine issue of material fact about the petitioner's nationality is presented, the court shall decide the nationality claim.

(B) Transfer if issue of fact

If the petitioner claims to be a national of the United States and the court of appeals finds that a genuine issue of material fact about the petitioner's nationality is presented, the court shall transfer the proceeding to the district court of the United States for the judicial district in which the petitioner resides for a new hearing on the nationality claim and a decision on that claim as if an action had been brought in the district court under section 2201 of title 28.

(C) Limitation on determination

The petitioner may have such nationality claim decided only as provided in this paragraph.

(6) Consolidation with review of motions to reopen or reconsider

When a petitioner seeks review of an order under this section, any review sought of a motion to reopen or reconsider the order shall be consolidated with the review of the order.

(7) Challenge to validity of orders in certain criminal proceedings

(A) In general

If the validity of an order of removal has not been judicially decided, a defendant in a criminal proceeding charged with violating section 1253(a) of this title may challenge the validity of the order in the criminal proceeding only by filing a separate motion before trial. The district court, without a jury, shall decide the motion before trial.

(B) Claims of United States nationality

If the defendant claims in the motion to be a national of the United States and the district court finds that—

(i) no genuine issue of material fact about the defendant's nationality is presented, the court shall decide the motion only on the administrative record on which the removal order is based and the administrative findings of fact are conclusive if supported by reasonable, substantial, and probative evidence on the record considered as a whole; or

(ii) a genuine issue of material fact about the defendant's nationality is presented, the court shall hold a new hearing on the nationality claim and decide that claim as if an action had been brought under section 2201 of title 28.

The defendant may have such nationality claim decided only as provided in this subparagraph.

(C) Consequence of invalidation

If the district court rules that the removal order is invalid, the court shall dismiss the indictment for violation of section 1253(a) of this title. The United States Government may appeal the dismissal to the court of appeals for the appropriate circuit within 30 days after the date of the dismissal.

(D) Limitation on filing petitions for review

The defendant in a criminal proceeding under section 1253(a) of this title may not file a petition for review under subsection (a) during the criminal proceeding.

(8) Construction

This subsection—

(A) does not prevent the Attorney General, after a final order of removal has been issued, from detaining the alien under section 1231(a) of this title;

(B) does not relieve the alien from complying with section 1231(a)(4) of this title and section 1253(g)[1] of this title; and

(C) does not require the Attorney General to defer removal of the alien.

(9) Consolidation of questions for judicial review

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

* * * * *

(g) Exclusive jurisdiction

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to com-

[1] See References in Text note below.

mence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.