

No. 26-380

---

**In the Supreme Court of the United States**

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

*Petitioners,*

v.

BADAR KHAN SURI,

*Respondent.*

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

**BRIEF OF IOWA AND 21 OTHER STATES  
AS AMICI CURIAE IN SUPPORT OF  
GRANTING THE PETITION**

---

BRENNA BIRD  
*Attorney General of Iowa*

ERIC WESSAN  
*Solicitor General*  
*Counsel of Record*

1305 E Walnut Street  
Des Moines, IA 50319  
(515) 823- 9117

eric.wessan@ag.iowa.gov

*Counsel for Amici Curiae*

*(additional counsel listed in addendum)*

---

**QUESTIONS PRESENTED**

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.

**TABLE OF CONTENTS**

|                                                                                                                                                          |    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| QUESTIONS PRESENTED .....                                                                                                                                | i  |
| TABLE OF CONTENTS .....                                                                                                                                  | ii |
| TABLE OF AUTHORITIES .....                                                                                                                               | iv |
| INTEREST OF AMICI CURIAE .....                                                                                                                           | 1  |
| INTRODUCTION AND SUMMARY OF<br>ARGUMENT.....                                                                                                             | 2  |
| ARGUMENT .....                                                                                                                                           | 4  |
| I. The INA Sends Every Challenge To The<br>Validity Of Removal, No Matter How It Is<br>Labeled, To The Court Of Appeals On A<br>Petition For Review..... | 4  |
| A. Sections 1252(b)(9), (g), and (a)(5) reach<br>detention claims that rest on the asserted<br>invalidity of removal. ....                               | 4  |
| B. Suri’s Habeas Petition Makes This Clear.<br>7                                                                                                         |    |
| C. The Fourth Circuit’s contrary reasoning<br>does not withstand scrutiny. ....                                                                          | 9  |
| II. The Fourth Circuit Compounded Its Error<br>By Using The All Writs Act To Freeze<br>Removal Proceedings.....                                          | 11 |
| III.The Decision Below Is The Latest Chapter<br>In A Sixty-Five-Year Pattern Of Judicial<br>Resistance To Congress’s Channeling<br>Commands. ....        | 13 |
| IV.The States Bear The Practical<br>Consequences of the Fourth Circuit’s Rule.<br>15                                                                     |    |

|                                                                                                      |    |
|------------------------------------------------------------------------------------------------------|----|
| A. The decision below turns state and local jailers into habeas defendants in removal disputes. .... | 15 |
| B. Releases under the Fourth Circuit’s loophole shift costs to the States. ....                      | 16 |
| V. The Split Is Acknowledged And Entrenched, And This Case Is An Ideal Vehicle. ....                 | 17 |
| CONCLUSION .....                                                                                     | 18 |
| ADDITIONAL ATTORNEYS GENERAL .....                                                                   | 1  |

## TABLE OF AUTHORITIES

### Cases

|                                                                           |                |
|---------------------------------------------------------------------------|----------------|
| <i>Ali v. Fed. Bureau of Prisons</i> ,<br>552 U.S. 214 (2008).....        | 7              |
| <i>Alvarez v. U.S. ICE</i> ,<br>818 F.3d 1194 (11th Cir. 2016).....       | 21             |
| <i>Arizona v. United States</i> ,<br>567 U.S. 387 (2012).....             | 2, 21          |
| <i>Clinton v. Goldsmith</i> ,<br>526 U.S. 529 (1999).....                 | 15             |
| <i>Demore v. Kim</i> ,<br>538 U.S. 510 (2003).....                        | 9, 20          |
| <i>Dhillon v. Mullin</i> ,<br>2026 WL 1587371 (D. Neb. June 3, 2026)..... | 2              |
| <i>Dubin v. United States</i> ,<br>599 U.S. 110 (2023).....               | 13             |
| <i>Foti v. INS</i> ,<br>375 U.S. 217 (1963).....                          | 17             |
| <i>Garland v. Aleman Gonzalez</i> ,<br>596 U.S. 543 (2022).....           | 18             |
| <i>Guerrero-Lasprilla v. Barr</i> ,<br>589 U.S. 221 (2020).....           | 6              |
| <i>INS v. St. Cyr</i> ,<br>533 U.S. 289 (2001).....                       | 5, 18          |
| <i>Jennings v. Rodriguez</i> ,<br>583 U.S. 281 (2018).....                | 9, 10          |
| <i>Khalil v. President</i> ,<br>164 F.4th 259 (3d Cir. 2026).....         | 13, 14, 21, 22 |
| <i>Mahdawi v. Trump</i> ,<br>183 F.4th 103 (2d Cir. 2026).....            | 13, 21         |
| <i>Mullin v. Doe</i> ,<br>146 S. Ct. 2121 (2026).....                     | 14             |
| <i>Nasrallah v. Barr</i> ,<br>590 U.S. 573 (2020).....                    | 6              |

|                                                                                               |                           |
|-----------------------------------------------------------------------------------------------|---------------------------|
| <i>Nken v. Holder</i> ,<br>556 U.S. 418 (2009) .....                                          | 16                        |
| <i>Norfolk &amp; W. Ry. Co. v. Am. Train Dispatchers Ass’n</i> ,<br>499 U.S. 117 (1991) ..... | 7                         |
| <i>Pa. Bureau of Corr. v. U.S. Marshals Serv.</i> ,<br>474 U.S. 34 (1985) .....               | 15                        |
| <i>Patel v. Garland</i> ,<br>596 U.S. 328 (2022) .....                                        | 14, 19                    |
| <i>Reno v. American-Arab Anti-Discrimination<br/>Committee</i> ,<br>525 U.S. 471 (1999) ..... | 4, 10, 11, 13, 14, 17, 18 |
| <i>Sheldon v. Sill</i> ,<br>49 U.S. (8 How.) 441 (1850) .....                                 | 3                         |
| <i>Shinn v. Ramirez</i> ,<br>596 U.S. 366 (2022) .....                                        | 19                        |
| <i>Syngenta Crop Prot., Inc. v. Henson</i> ,<br>537 U.S. 28 (2002) .....                      | 15                        |
| <i>Thuraissigiam</i> ,<br>591 U.S. 103 (2020) .....                                           | 19                        |
| <i>Trump v. CASA, Inc.</i> ,<br>145 S. Ct. 2540 (2025) .....                                  | 16                        |
| <i>Zadvydas v. Davis</i> ,<br>533 U.S. 678 (2001) .....                                       | 9                         |
| Statutes                                                                                      |                           |
| 8 U.S.C. § 1226(a) .....                                                                      | 8, 9                      |
| 8 U.S.C. § 1227 .....                                                                         | 11                        |
| 8 U.S.C. § 1252 6, 7, 8, 9, 11, 13, 14, 15, 16, 17, 18, 19,<br>21, 22                         |                           |
| 8 U.S.C. § 1357(g) .....                                                                      | 1                         |
| 28 U.S.C. § 1651 .....                                                                        | 4, 15, 16, 18             |
| U.S. Const. art. III, § 1 .....                                                               | 2                         |
| Regulations                                                                                   |                           |
| 8 C.F.R. § 236.1(b)(1) .....                                                                  | 8                         |

## INTEREST OF AMICI CURIAE<sup>1</sup>

States do not run the federal removal system. But they must operate alongside it. That is why Iowa and 21 additional States join this amicus in support of Petitioners. The number of State and local law-enforcement agencies with written agreements under federal law partnering with U.S. Immigration and Customs Enforcement under 8 U.S.C. § 1357(g) passed 1,000 in September 2025 and has kept climbing. *See* Press Release, U.S. Dep’t of Homeland Sec., *DHS 287(g) Reaches More Than 1,000 Partnerships with State and Local Enforcement* (Sept. 17, 2025), <https://perma.cc/6FZN-QU9P>.

County jails across the country house federal immigration detainees under intergovernmental service agreements. And Florida, Indiana, Louisiana, and Nebraska have each stepped up at times to hold ICE detainees in state-run facilities. *See* Shannon Heffernan & Beth Schwartzapfel, *The Next Alligator Alcatraz Could Be in Your State*, The Marshall Project (Aug. 22, 2025), <https://perma.cc/7YLJ-H4EE>. ICE held 65,765 people in detention as of July 2026. TRAC, *Immigration Detention Quick Facts* (data through July 11, 2026), <https://perma.cc/A3LB-N6F6>.

Those partnerships puts States on the receiving end of the decision below. A habeas petition names the detainee’s custodian. When the custodian is a sheriff, a county jailer, or a state warden, the State or its subdivision becomes a respondent, must answer, and must carry out any release or transfer order. *See, e.g., Dhillon v. Mullin*, 2026 WL 1587371, at \*1 (D. Neb.

---

<sup>1</sup> Pursuant to Rule 37.2, amici provided timely notice of their intent to file this brief to all parties.

June 3, 2026) (naming federal, Nebraska, and Iowa officials in immigration habeas petition). Suri himself named the warden of the Farmville Detention Center, a facility operated under the Town of Farmville's contract with ICE. Pet. II; see Pet.App. 1a. Under the Fourth Circuit's rule, every detainee in every one of those facilities may sue his jailer in district court to litigate whether he should have been placed in removal proceedings at all.

The States also absorb the costs when aliens who should await their hearings in custody are released instead. "The pervasiveness of federal regulation does not diminish the importance of immigration policy to the States," which "bear[] many of the consequences of unlawful immigration." *Arizona v. United States*, 567 U.S. 387, 397 (2012).

And the States have a structural stake. Congress's power to define the jurisdiction of the lower federal courts protects the States as much as the federal government. See U.S. Const. art. III, § 1; *Sheldon v. Sill*, 49 U.S. (8 How.) 441, 449 (1850). The States rely on statutes that direct, delay, or foreclose federal jurisdiction every day. See, e.g., 28 U.S.C. §§ 1341, 2254(b), 2283. If lower courts may read "all," "any," "only," and "no" out of a channeling statute, the next statute is no safer.

The States therefore urge the Court to grant the petition.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Congress has told the federal courts three times, in progressively louder terms, that challenges arising from removal belong in one place: a petition for

review in the court of appeals after a final order. The Fourth Circuit held that an alien may skip that line whenever he labels his objection to removal an objection to the detention that accompanies it. That holding warrants review for four reasons.

*First*, the decision below cannot be squared with the text. Section 1252(b)(9) channels “all questions of law and fact, including interpretation and application of constitutional and statutory provisions,” that arise from “any action taken or proceeding brought to remove an alien.” Section 1252(g) bars “any cause or claim” arising from the decision to “commence proceedings.” Detention under § 1226(a) exists only “pending a decision on whether the alien is to be removed.” A claim that detention is unlawful because the removal proceedings never should have begun arises from those proceedings under any fair reading. This Court held as much for a materially identical First Amendment selective-enforcement claim in *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999).

*Second*, the Fourth Circuit compounded the error by affirming an All Writs Act injunction that has barred Suri’s removal for eighteen months. Congress named the All Writs Act, 28 U.S.C. § 1651, in both § 1252(b)(9) and § 1252(g) as a source of jurisdiction that the INA displaces. The court of appeals never mentioned that text.

*Third*, the decision below is the latest chapter in a sixty-five-year pattern. Courts carve exceptions from the immigration law’s channeling sections; Congress closes them. Congress has done its part. Only this Court can end the cycle.

*Fourth*, the States bear the consequences. State and local jails become habeas respondents, released detainees return to state communities, and the Fourth Circuit’s broad habeas-venue rule exports its loophole to detainees held far outside that circuit. The split is acknowledged and entrenched, this case is a clean vehicle.

The petition should be granted.

## ARGUMENT

### **I. THE INA SENDS EVERY CHALLENGE TO THE VALIDITY OF REMOVAL, NO MATTER HOW IT IS LABELED, TO THE COURT OF APPEALS ON A PETITION FOR REVIEW..**

#### ***A. Sections 1252(b)(9), (g), and (a)(5) reach detention claims that rest on the asserted invalidity of removal.***

This Court recognized that the INA’s “zipper clause” consolidated “‘judicial review’ of immigration proceedings into one action in the court of appeals.” *INS v. St. Cyr*, 533 U.S. 289, 313 (2001); *see id.* at 327 (Scalia, J., dissenting).

The clause explains: “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.” 8 U.S.C. § 1252(b)(9).

And it includes a backstop: “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.” *Id.*

The “zipper clause” that “consolidate[s]” an alien’s “various challenges arising from [a] removal proceeding” into a single petition for review. *Nasrallah v. Barr*, 590 U.S. 573, 580, 589 (2020); *see Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 230-31 (2020).

Every operative word points the same way. “All” “indicates no limitation.” *Norfolk & W. Ry. Co. v. Am. Train Dispatchers Ass’n*, 499 U.S. 117, 129 (1991). “Any” means “one or some indiscriminately of whatever kind.” *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008) (quotation marks omitted). “Only” and “no court” leave nothing to interpretation. And Congress expressly included constitutional questions in the channeled set. The statute thus answers the question the Fourth Circuit thought open: a First Amendment challenge to the government’s reasons for pursuing removal is a “question[] of law” involving the “interpretation and application of constitutional . . . provisions.” 8 U.S.C. § 1252(b)(9).

Section 1252(g) closes the remaining gap. “[N]otwithstanding 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 commence proceedings, adjudicate cases, or execute removal orders against any alien.” 8 U.S.C. § 1252(g). And § 1252(a)(5) makes

the petition for review “the sole and exclusive means for judicial review of an order of removal.”

Detention pending removal “aris[es] from” the proceeding “brought to remove” the alien. The INA authorizes the government to arrest and detain an alien like Suri only “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). The custody decision is made at the same moment the government commences proceedings. 8 C.F.R. § 236.1(b)(1); Pet.App. 72a-73a (Wilkinson, J., dissenting). And the detention exists to make removal possible. *Demore v. Kim*, 538 U.S. 510, 528 (2003); see *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (removal is “detention’s goal”). Without the removal proceeding there is no § 1226(a) detention. So a claim that the detention is unlawful because the proceeding is unlawful is a claim “arising from” that proceeding.

This Court has already said so. The *Jennings* plurality explained that § 1252(b)(9) reaches aliens “challenging the decision to detain them in the first place or to seek removal.” *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (plurality op.). Two more Justices would have read the provision more broadly still. *Id.* at 314-18 (Thomas, J., concurring in part and concurring in the judgment). The detainees in *Jennings* could proceed because they challenged the *length* of detention, a question that would come “too late” on a petition for review. *Id.* at 293-94. Suri challenges the decision to detain him “in the first place,” and on grounds that go to whether he may be removed at all.

AADC removes any doubt. There, aliens alleged that the government had targeted them for

deportation because of their association with a designated foreign terrorist organization, in violation of the First and Fifth Amendments. 525 U.S. at 473-74.

This Court held that § 1252(g) stripped the district court of jurisdiction, because the claims attacked the decision to “commence proceedings.” *Id.* at 487-92. It explained that § 1252(g) targets “attempts to impose judicial constraints upon prosecutorial discretion.” *Id.* at 485 n.9. And it held that “an alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense against his deportation.” *Id.* at 488. Suri’s claims are *AADC*’s claims with a bail motion attached.

***B. Suri’s Habeas Petition Makes This Clear.***

Suri’s habeas petition does not hide its target. It alleges that an unlawful “Policy” of retaliating against aliens “supportive of Palestinian rights or critical of Israel” produced the “Rubio Determination,” and that the determination taints his “targeting, arrest, transfer, and ongoing detention.” Pet. 9-10; Pet.App. 9a. Take away the determination and his detention claims have nothing left.

Consider what that determination found. Secretary Rubio concluded under 8 U.S.C. § 1227(a)(4)(C)(i) that Suri’s presence “would have potentially serious adverse foreign policy consequences for the United States.” Pet. 8. The Secretary found, on information from several federal agencies, that Suri’s father-in-law is “a senior Hamas figure” and that Suri had personally “expressed support” for Hamas leadership. *Am. Ass’n of Univ.*

*Professors v. Rubio*, No. 1:25-cv-10685, Dkt. 315-15, at 19-21 (D. Mass. Jan. 22, 2026).

He found that Suri had a “direct connection to Hamas leadership,” “actively spread[] [Hamas] propaganda and promot[ed] antisemitism on social media,” and was “involve[d] in antisemitic activities” that contributed to a “hostile environment for Jewish students” at Georgetown. *AAUP*, Dkt. 315, at 56-57; Pet.App. 5a n.3. DHS publicly stated that Suri “has close connections to a known or suspected terrorist, who is a senior advisor to Hamas.” Pet.App. 5a (cleaned up). And the Secretary determined that Suri’s activities threatened the “peace process underway in the Middle East” and the Nation’s “policy to combat antisemitism around the world and in the United States.” *AAUP*, Dkt. 315, at 57. In November 2025, an immigration judge found Suri removable. Pet. 9.

The merits of those findings are not before this Court, and the States do not ask the Court to resolve them. Congress assigned them to the immigration judge, the Board of Immigration Appeals, and then a court of appeals on a petition for review. 8 U.S.C. §§ 1229a, 1252(a)(5), (b)(9). But the findings show the damage the Fourth Circuit’s rule causes.

At a bail hearing, the district court weighed the Secretary’s foreign-policy judgment against Suri’s “uncontroverted” allegations, observed that the government had “provided no other evidence” of “Hamas propaganda,” and found a “high probability” that Suri would prevail on claims that his apprehension and detention were retaliatory. Pet.App. 118a, 123a. A district judge sitting in habeas thus passed on the lawfulness of the determination

that renders Suri removable, while the removal case remained pending before the immigration judge. That is the “deconstruction, fragmentation, and hence prolongation of removal proceedings” that 8 U.S.C. § 1252 was written to stop. *AADC*, 525 U.S. at 487.

The Fourth Circuit’s own disposition gives the game away. The majority insisted that Suri’s amended petition challenged only his “apprehension, detention, and transfer,” not removal. Pet.App. 37a n.15. Yet the same court affirmed an order forbidding the government from removing him. Pet.App. 62a-65a. A detention case does not need a removal injunction. A removal case does.

***C. The Fourth Circuit’s contrary reasoning does not withstand scrutiny.***

The court of appeals offered three main reasons for its holding. But none of its reasons hold up.

*First*, it reasoned that jurisdiction turns on “the substance of the relief” sought, release rather than relief from removal. Pet.App. 42a. But § 1252(b)(9) channels “questions of law and fact,” not remedies. A question of law does not transform a petition because the prayer for relief asks for a bail order, too. The Fourth Circuit conceded “substantial substantive overlap” between Suri’s detention and removal claims. *Id.* Under the statute, that overlap is the whole ballgame. See *Khalil v. President*, 164 F.4th 259, 274-76 (3d Cir. 2026) (per curiam); *Mahdawi v. Trump*, 183 F.4th 103, 117-20 (2d Cir. 2026), *reh’g en banc granted*, No. 25-1113 (2d Cir. Sept. 3, 2026).

*Second*, the court read § 1252(b)(9) to apply only after a final order of removal issues, relying on the heading of § 1252(b). Pet.App. 44a-46a. But the

heading cannot overrule the text. *Dubin v. United States*, 599 U.S. 110, 120-21 (2023). Review of channeled questions “shall be available *only* in judicial review of a final order.” 8 U.S.C. § 1252(b)(9) (emphasis added).

That language defers review until a final order exists; it does not license unlimited review until then. Pet.App. 76a (Wilkinson, J., dissenting). And the Fourth Circuit’s reading produces an upside-down statute: district courts get free rein during the months or years a removal case is pending, then lose jurisdiction the moment the process ends. *AADC* itself recognized that § 1252(b)(9) would have channeled a suit filed “[a]lmost immediately” after proceedings began, had it been in effect. 525 U.S. at 473, 483.

*Third*, the court invoked the presumption favoring judicial review and warned that Suri’s claims would otherwise escape review. Pet.App. 33a-35a, 53a-54a, 60a-61a. But the INA does not deny review. It defers and consolidates it. The court of appeals on a petition for review may decide “constitutional claims or questions of law.” 8 U.S.C. § 1252(a)(2)(D). Where the administrative record falls short, courts of appeals have tools for factfinding. *Khalil*, 164 F.4th at 280-81; Pet.App. 79a (Wilkinson, J., dissenting).

Indeed, the presumption of reviewability asks *whether* review exists. It does not let a court move review to a forum Congress rejected. And a presumption gives way to clear text. *See Patel v. Garland*, 596 U.S. 328, 346 (2022); *Mullin v. Doe*, 146 S. Ct. 2121, 2134 (2026). Congress accepted that “an alien with a meritorious claim might have to wait months before receiving relief” as the price of a single,

orderly round of review. Pet.App. 80a (Wilkinson, J., dissenting). That choice belongs to Congress.

## II. THE FOURTH CIRCUIT COMPOUNDED ITS ERROR BY USING THE ALL WRITS ACT TO FREEZE REMOVAL PROCEEDINGS.

On March 20, 2025, three days after Suri’s arrest and before any court had decided whether it had jurisdiction, the district court entered an *ex parte* order under the All Writs Act ordering that Suri “shall not be removed from the United States unless and until the Court issues a contrary order.” Pet.App. 89a-90a. That order remains in force. The Fourth Circuit affirmed it. Pet.App. 62a-65a. The States urge the Court to address that holding as part of the question presented, because it shows how far the decision below reaches.

The All Writs Act authorizes writs “in aid of” a court’s “respective jurisdiction[]” and “agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). It “does not confer jurisdiction on the federal courts.” *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 33 (2002). It confines a court to process “in aid of its existing statutory jurisdiction” and “does not enlarge that jurisdiction.” *Clinton v. Goldsmith*, 526 U.S. 529, 534-35 (1999). And “[w]here a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling.” *Pa. Bureau of Corr. v. U.S. Marshals Serv.*, 474 U.S. 34, 43 (1985).

Here the INA addresses that issue by explicitly displacing All Writs Act authority. Section 1252(b)(9) states that “no court shall have jurisdiction . . . by section 1361 or 1651 of [title 28]” to review questions

arising from removal proceedings. 8 U.S.C. § 1252(b)(9) (emphasis added).

That reflects Section 1252(g), too, which withdraws jurisdiction over any claim arising from the decision to “execute removal orders,” “notwithstanding . . . sections 1361 and 1651.” 8 U.S.C. § 1252(g) (emphasis added). Congress anticipated that litigants would reach for the All Writs Act door to halt removal, and it locked that door shut. The Fourth Circuit’s discussion of the Act never quotes, cites, or acknowledges either reference. Pet.App. 62a-65a. Instead, it dismissed the Government’s argument as “creative” and declined to address the statutory text. Pet.App. 64a

More, Congress set a demanding standard for enjoining removal even after a final order: “no court shall enjoin the removal of any alien pursuant to a final order . . . unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law.” 8 U.S.C. § 1252(f)(2). Stays of removal pending a petition for review require the traditional four-factor showing. *Nken v. Holder*, 556 U.S. 418, 433-34 (2009). The Fourth Circuit now lets a district court bar removal indefinitely, before any final order, *ex parte*, on no showing of likely success at all. The result is backwards: an alien gets more protection from removal before the immigration judge rules than after.

The Fourth Circuit’s answers to text fail. It said the Act’s text contains no “nexus” limit. Pet.App. 63a-64a. But the text requires that a writ be “in aid of” jurisdiction the court actually has and “agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). A writ that accomplishes what the jurisdictional

statute forbids is neither. *Cf. Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2551 (2025) (federal courts’ equitable authority is bounded by traditional practice).

The court also said the order was needed because the government takes the position that courts lack jurisdiction over already-removed aliens. Pet.App. 63a. That rationale proves too much. Every habeas petitioner in removal proceedings could invoke it, which means every habeas petition would carry an automatic stay of removal. In the Fourth Circuit, filing a petition now buys a freeze. Pet.App. 87a-88a (Wilkinson, J., dissenting). That is not the law Congress passed—nor is it consistent with this Court’s precedents.

### **III. THE DECISION BELOW IS THE LATEST CHAPTER IN A SIXTY-FIVE-YEAR PATTERN OF JUDICIAL RESISTANCE TO CONGRESS’S CHANNELING COMMANDS.**

Section 1252’s history is of Congress closing doors that courts opened. In 1961, Congress eliminated district-court suits as the first step in reviewing deportation orders, making the petition for review “the sole and exclusive procedure” to “expedite the deportation [process] by preventing successive dilatory appeals to various federal courts.” *Foti v. INS*, 375 U.S. 217, 221, 226 (1963).

Courts then permitted district-court challenges to “various decisions and actions leading up to or consequent upon final orders of deportation.” *AADC*, 525 U.S. at 485. So Congress responded in 1996 with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which extended channeling to “all questions of law and fact . . . arising from any

action taken or proceeding brought to remove an alien” and added § 1252(g). Pub. L. No. 104-208, § 306(a)(2), 110 Stat. 3009-546, 3009-610, 3009-612. “[P]rotecting the Executive’s discretion from the courts” became “the theme of the legislation.” *AADC*, 525 U.S. at 486.

Then *INS v. St. Cyr*, 533 U.S. 289, 314 (2001), held that IIRIRA did not reach habeas. Congress answered again in the REAL ID Act of 2005, writing “habeas corpus” and § 1651 into the statute. Pub. L. No. 109-13, § 106(a), 119 Stat. 231, 310-11. The conference report explained that “[d]espite Congress’s efforts to limit judicial review in 1996,” courts had “expanded it,” producing “bifurcated and piecemeal litigation,” and that Congress “intended to preclude all district court review of any issue raised in a removal proceeding.” H.R. Rep. No. 109-72, at 173-74 (2005) (Conf. Rep.); see Pet.App. 67a-70a (Wilkinson, J., dissenting).

The Fourth Circuit leaned on a different sentence of that report, which says the REAL ID Act would not “preclude habeas review over challenges to detention that are independent of challenges to removal orders.” Pet.App. 47a; H.R. Rep. No. 109-72, at 175.. But that sentence helps the government. The operative word is “independent.” Pet.App. 47a. Claims like Suri’s, which rise or fall with the lawfulness of the decision to remove, are the opposite of independent.

Now the cycle has come around again. Between “any,” “all,” “sole and exclusive,” “only,” and “no,” “it is difficult to imagine how Congress could have expressed its intentions more forcefully.” Pet.App. 70a (Wilkinson, J., dissenting). Congress has done what it can. And this Court, too, has repeatedly enforced the INA’s jurisdictional limits as written. *See, e.g.,*

*Garland v. Aleman Gonzalez*, 596 U.S. 543, 550-54 (2022); *Patel*, 596 U.S. at 338-47; *DHS v. Thuraissigiam*, 591 U.S. 103, 138-40 (2020). Other courts have not always followed. Unless the Court intervenes, Congress will be left to amend § 1252 a fourth time and wait for the next exception.

The States have their own reasons to care. Statutes that direct or postpone federal jurisdiction protect state tax systems, state-court proceedings, and state criminal judgments. *See* 28 U.S.C. §§ 1341, 2254(b), 2283; *Shinn v. Ramirez*, 596 U.S. 366, 375-83 (2022) (rejecting judge-made exception to AEDPA's limits). The interpretive move the Fourth Circuit made here, treating emphatic jurisdictional text as a presumption to be balanced against the court's sense of fairness, would work just as well against those statutes. The States have a stake in stopping it now.

#### IV. THE STATES BEAR THE PRACTICAL CONSEQUENCES OF THE FOURTH CIRCUIT'S RULE.

##### ***A. The decision below turns state and local jailers into habeas defendants in removal disputes.***

Habeas lawsuits are filed against the custodian. When the custodian is a county jail or a state facility, the State's officers are named, must respond, and must comply with the district court's orders. The partnership network is now vast. More than 1,000 state and local agencies had joined the § 1357(g) program by September 2025, and States house ICE detainees in state prisons.

The Fourth Circuit's rule multiplies that exposure. Any detainee may now bring the case against his removal into district court through a habeas petition against his jailer. The State's officers then answer for a foreign-policy determination they had no part in making, and must carry out bail, transfer, and return orders. The district court here ordered Suri moved from Texas back to Virginia and released. Pet.App. 91a-92a. Local jail operators did not sign up to be parties in collateral attacks on the Secretary of State's judgments.

The rule does not stop at the Fourth Circuit's borders. Detainees "frequently cross state lines while being transferred to their ultimate detention facility." Pet. 23. Suri passed through Virginia, Louisiana, and Texas within four days. Pet.App. 6a-8a. The Fourth Circuit held that the Eastern District of Virginia retained habeas jurisdiction even though Suri was in Louisiana when his petition was filed. Pet.App. 16a-33a. Its channeling rule therefore follows detainees to facilities in the Fifth Circuit and beyond, in States whose own circuit would have dismissed the claim. The uniform federal law here should not turn on which county jail a detainee passed through on his way to a hearing.

***B. Releases under the Fourth Circuit's  
loophole shift costs to the States.***

Detention exists to ensure that aliens appear for their proceedings and can be removed if ordered. *Demore*, 538 U.S. at 528. Congress adopted mandatory detention for criminal aliens after finding that more than 20% of deportable criminal aliens released on bond failed to appear. *Id.* at 519-20. The problem has not gone away. From fiscal year 2016 through 2023,

immigration judges ordered 34% of non-detained respondents removed in absentia because they did not appear. U.S. Gov’t Accountability Off., GAO-25-106867, *Immigration Courts: Actions Needed to Track and Report Noncitizens’ Hearing Appearances* (Dec. 19, 2024), <https://perma.cc/GG9J-JC2U>.

The States do not suggest that Suri will abscond. But “the rules we craft for Suri are the rules that will govern everyone else too.” Pet.App. 88a (Wilkinson, J., dissenting). A rule that invites every detainee to seek release in district court, on a showing no immigration judge ever reviewed, will produce more releases. When released aliens do not appear, state and local law enforcement, schools, hospitals, and social-service agencies bear the consequences. *See Arizona*, 567 U.S. at 397-98. Congress built a system in which the immigration judge decides custody in the first instance and review follows in the court of appeals. The States are entitled to rely on it.

**V. THE SPLIT IS ACKNOWLEDGED AND ENTRENCHED, AND THIS CASE IS AN IDEAL VEHICLE.**

The Fourth Circuit acknowledged that it “disagree[d]” with the Third Circuit and with the Second Circuit’s merits panel. Pet.App. 54a-55a & n.25; *see Khalil*, 164 F.4th at 273-81; *Mahdawi*, 183 F.4th at 114-23. Its § 1252(g) holding also conflicts with the Eleventh Circuit’s decision that the decision to “detain [an alien] during his removal proceedings” is “closely connected to the decision to commence proceedings.” *Alvarez v. U.S. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016); Pet.App. 84a-85a (Wilkinson, J., dissenting). The Second Circuit has granted rehearing

en banc and has said it will hold that case in abeyance if this Court grants review here. Percolation has hit its natural stopping point.

And this case cleanly presents the question. The Fourth Circuit decided both § 1252(b)(9) and § 1252(g) on a developed record. The All Writs Act ruling shows the practical stakes too. And because removal cases can become moot through voluntary departure, a final order, or termination of proceedings, the States agree with the government that the Court should also grant review in *Khalil* as a petition was filed by the October 19, 2026 deadline.

### CONCLUSION

This Court should grant the United States's petition for certiorari.

Respectfully submitted,

BRENNA BIRD

*Attorney General*

*State of Iowa*

ERIC WESSAN\*

*Solicitor General*

(515) 823- 9177

eric.wessan@ag.iowa.gov

October 20, 2026

*\*Counsel of Record*

## APPENDIX

## APPENDIX TABLE OF CONTENTS

|                          | Page |
|--------------------------|------|
| Additional Counsel ..... | 1a   |

**ADDITIONAL ATTORNEYS GENERAL**

Steve Marshall  
Attorney General of  
Alabama

Lynn Fitch  
Attorney General of  
Mississippi

Tim Griffin  
Attorney General of  
Arkansas

Catherine Hanaway  
Attorney General of  
Missouri

James Uthmeier  
Attorney General of  
Florida

Austin Knudsen  
Attorney General of  
Montana

Chris Carr  
Attorney General of  
Georgia

Michael T. Hilgers  
Attorney General of  
Nebraska

Raúl R. Labrador  
Attorney General of  
Idaho

Drew Wrigley  
Attorney General of  
North Dakota

Theodore E. Rokita  
Attorney General of  
Indiana

Andy Wilson  
Attorney General of  
Ohio

Kris Kobach  
Attorney General of  
Kansas

Gentner Drummond  
Attorney General of  
Oklahoma

Russell M. Coleman  
Attorney General of  
Kentucky

Alan Wilson  
Attorney General of  
South Carolina

Liz Murrill  
Attorney General of  
Louisiana

Marty Jackley  
Attorney General of  
South Dakota

2a

Jonathan Skrmetti  
Attorney General of  
Tennessee

Ken Paxton  
Attorney General of  
Texas

John B. McCuskey  
Attorney General of  
West Virginia