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 IN OPPOSITION

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QUESTION PRESENTED

U.S. Immigration and Customs Enforcement detained Dr. Badar Khan Suri, a university professor and J-1 visa holder, after placing him in removal proceedings on asserted "foreign policy" grounds. Like countless noncitizens before him, Dr. Suri filed a habeas petition under 28 U.S.C. § 2241 to challenge the lawfulness of his detention. He alleged that the government violated the First Amendment by detaining him to retaliate against and chill his protected political speech, and that it violated the Fifth Amendment's Due Process Clause because he posed no flight risk or danger and thus there was no justification for his detention.

The question presented is:

Whether a noncitizen may seek habeas review under 28 U.S.C. § 2241 where he claims that his detention violates the U.S. Constitution, or whether 8 U.S.C. §§ 1252(b)(9) and (g)—which channel and limit judicial review of issues pertaining to removal orders—deprive federal district courts of their jurisdiction to review such claims?

RELATED PROCEEDINGS

This petition for certiorari concerns Respondent's petition for a writ of habeas corpus challenging his detention by Petitioners, filed in the Eastern District of Virginia, *Suri v. Trump*, No. 25-cv-480 (E.D. Va.), and a subsequent appeal by Petitioners to the Fourth Circuit, *Suri v. Trump*, No. 25-1560 (4th Cir.).

Respondent is also subject to ongoing administrative removal proceedings that are not at issue in this petition.

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INTRODUCTION

The federal courts, including this Court, regularly adjudicate habeas petitions filed by noncitizens under 28 U.S.C. § 2241 to challenge the lawfulness of their detention. *See Nielsen v. Preap*, 586 U.S. 392, 401–04 (2019); *Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018) (plurality opinion); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). That review is in line with our bedrock constitutional guarantee that an individual claiming he is subject to unlawful executive detention can call on a federal court to consider his claim and afford him the remedy of release. In this case, the Fourth Circuit correctly rejected the government's argument that judicial review statutes enacted by Congress in 1996, 8 U.S.C. §§ 1252(b)(9) and (g), strip the courts of habeas jurisdiction over detention claims. As this Court's precedents confirm, individuals like Respondent Dr. Badar Khan Suri may challenge their detention at the hands of the Executive Branch, and forcing Dr. Suri to wait to challenge his unlawful detention on First Amendment grounds would be "absurd." Pet.App.53a-54a (quoting *Jennings*, 583 U.S. at 293).

The government argues for certiorari on the ground that Dr. Suri's detention claims are somehow different from the garden-variety detention claims that nobody can seriously dispute are always available in habeas, but they are not. He claims that even if he can be removed, the government's decision to detain him violates the Fifth Amendment because it cannot be justified by a legitimate purpose such as flight risk and danger to the community, and violates the First Amendment because it is retaliatory and designed to

suppress his speech. These are not "claims that also go to the validity of…being removed," Cert.Pet.(I) (question presented). And as the Fourth Circuit made clear, to conclude that Congress, in §§ 1252(g) and (b)(9), barred such claims in habeas is a radical position without any support. Section 1252(b) channels review of orders of removal into a "petition for review" filed in a court of appeals. And § 1252(b)(9) and § 1252(g) consolidate judicial review of removal orders into the petition-for-review process. Neither strips federal courts of their long-recognized habeas jurisdiction to consider detention claims, as distinct from removal claims. It is only by conflating the two that the government cobbles together a petition, but there are no good reasons for this Court to review the Fourth Circuit's decision.

First, the court of appeals' decision is correct and consistent with numerous precedents of this Court considering claims of unlawful executive detention in habeas corpus. Such claims, including Dr. Suri's, do not fall within § 1252's channeling provisions because they challenge detention, not removal. The district court's decision ordering Dr. Suri's release does not short-circuit his ongoing removal proceeding—indeed, participating in those proceedings was an explicit condition of his release by the district court. Regardless of the ultimate outcome of the removal case, Dr. Suri's habeas claim is that his detention is retaliatory and punitive, and unjustified by any legitimate purpose like flight risk or danger, violating the First and Fifth Amendments. While the government implausibly insists that Dr. Suri's detention claims pose a "collateral[] attack" on his removal, the consequence of its argument is that those

claims must be channeled into the petition-for-review process, which cannot even begin until a final order of removal has issued from the immigration court and the Board of Immigration Appeals—a process that can take years, if such an order is ever entered at all. Cert.Pet.2. That would mean that Dr. Suri would have "no recourse for his unlawful detention" for months or years—or maybe ever—since "[b]y the time a final order of removal [would be] eventually entered, the allegedly excessive detention would have already taken place." Pet.App.54a; *Jennings*, 583 U.S. at 293. That is not the law.

Second, the government has identified at best a shallow and underdeveloped circuit split. While only superficially in tension with this case, *Khalil v. Trump*, 164 F.4th 259 (3d Cir. 2026), is distinguishable on multiple relevant grounds. Most important, the central injunction under review in *Khalil* rendered *both* the petitioner's detention and his removal unconstitutional in one fell swoop on vagueness grounds, and even curtailed the authority of the immigration judge in the petitioner's removal proceedings. *Id.* That is a vastly different case than this one, where the district court and Fourth Circuit made crystal clear that they were only reviewing claims that went to Dr. Suri's detention alone, and not his removal. *Khalil* therefore presents a very different analysis under § 1252(b)(9). And as to § 1252(g), there is no conflict between the Third and Fourth Circuits because the Third Circuit did not even address it. In any event, should a clear split develop, this Court will have other opportunities to decide the questions presented in the petition concerning detention claims "that also go to the validity of" removal. Cert.Pet.(I);

see, e.g., Order, *Mahdawi v. Trump*, No. 25-1113 (2d Cir. Sep. 11, 2026), Dkt. No. 246 (setting en banc argument for Dec. 16).

Third, the government's argument about the importance of review is vastly exaggerated. This Court and lower courts already consider challenges to unlawful immigration detention. And to the extent the government is concerned about overlap between the legal issues in detention challenges and removal cases, its arguments at most affect the few cases—fewer than a dozen, to Respondent's knowledge—in which habeas petitioners claim the government has detained them in retaliation for their protected speech, and where the government also seeks to remove them on the basis of that speech. Even in that unusual context, though, immediate federal habeas review is acutely needed to prevent the irreparable and ongoing harms of censorship.

The Court should deny the petition. Alternatively, the Court may defer consideration pending *DHS v. D.V.D.*, No. 26-426, where the government is making sweeping arguments on the scope of §§ 1252(g) & (b)(9).

STATEMENT OF THE CASE

A. Legal Framework

The federal habeas statute, 28 U.S.C. § 2241, provides that the writ of habeas corpus may be granted by a federal court when a person "is in custody in violation of the Constitution or laws or treaties of the United States." *Id.* § 2241(c)(3). Federal courts, including this Court, regularly adjudicate habeas petitions filed by noncitizens contesting the lawfulness of their detention by immigration authorities.

In 1996, Congress enacted the current judicial review framework of 8 U.S.C. § 1252, as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"). Section 1252(b) governs federal court review of administrative removal orders through a "petition for review" initiated in a federal circuit court. Section 1252(b)(9) "consolidat[ed]" "[j]udicial 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" in the petition-for-review process, and specifically precluded habeas jurisdiction "to review such an order or such questions of law or fact." Section 1252(g) further provided that except as provided in § 1252, "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…."

Sections 1252(b)(9) and (g) thus ensured that individuals would have a single, consolidated

mechanism to seek federal court review of final removal orders. Nothing in those sections, or elsewhere in § 1252, disturbed the baseline provision for individuals to challenge their unlawful detention through 28 U.S.C. § 2241. Since IIRIRA, the federal courts have adjudicated countless immigration detention claims through habeas corpus. *See, e.g.*, *Nielsen*, 586 U.S. at 401–04; *Jennings*, 583 U.S. at 292–96; *Demore*, 538 U.S. at 516–17; *Zadvydas*, 533 U.S. at 688.

B. Dr. Suri's Immigration Detention

Dr. Suri is an Indian national and a scholar of peace and conflict studies. In December 2022, he lawfully came to the United States on a J-1 exchange visa for a postdoctoral fellowship at Georgetown University. Pet.App.3a–4a. He resides in Virginia with his wife, who is a U.S. citizen, and their three children. Pet.App.4a.

Over several years, Dr. Suri's wife shared social-media posts mourning friends and family members killed in Gaza and expressing sorrow for the mounting death toll in the region. Pet.App.2a. On a handful of occasions, Dr. Suri likewise made social media posts criticizing the death toll and U.S. support for the Israeli military's actions in Gaza, and affirming principles of international law. Pet.App.4a.

On March 15, 2025, Secretary of State Marco Rubio terminated Dr. Suri's J-1 status. Pet.App.5a. Secretary Rubio invoked the rarely-used foreign policy ground, 8 U.S.C. § 1227(a)(4)(C), stating Dr. Suri's presence or activities in the United States "would compromise a compelling United States foreign policy interest," 8 U.S.C. § 1182(a)(1)(C)(3)(iii). *See*

Pet.App.5a–6a. Separately, the Department of Homeland Security ("DHS") issued a custody determination to detain him under an immigration detention statute, 8 U.S.C. § 1226(a), which allows but does not require the detention of noncitizens pending removal proceedings. Pet.App.6a.[1] Dr. Suri was not notified of these actions.

On March 17, masked officers emerged from unmarked cars outside his home and took Dr. Suri into custody. App.6a. The officers told him his visa had been revoked due to his social media activity and that he would be deported that same day. *Id.* Over the first eleven hours after his arrest, the government held Dr. Suri in three different detention centers across Virginia. *Id.* at 6a. After allowing him to contact his wife and inform her of his first location, immigration officers denied requests to contact her or his lawyer following subsequent transfers. *Id.* at 7a. Seventeen hours after his initial detention, officers flew Dr. Suri to Louisiana, where he remained for three nights. *Id.* They then transported Dr. Suri to the Prairieland Detention Center in Texas. *Id.* at 8a.

C. District Court Proceedings

On March 18, immediately upon discovering that Dr. Suri had been detained, his lawyers filed a habeas petition under 28 U.S.C. § 2241 in the Eastern District of Virginia seeking his release. Pet.App.9a. The petition alleged that Dr. Suri's "targeting, arrest, transfer, and ongoing detention" violated the First

[1] While the foreign policy charge did not subject Dr. Suri to mandatory detention, the government's choice to detain him rendered him ineligible for a bond hearing under prevailing regulations. *See* Pet.App.38a n.16; 8 C.F.R. § 1003.19(h)(2)(i)(C).

and Fifth Amendments. Pet.App.9a (quoting J.A. 21–24). He claimed his detention was in retaliation for, and intended to chill, protected speech in violation of the First Amendment, and that his detention served no legitimate purpose, such as "to facilitate deportation, or to protect against risk of flight or dangerousness," in violation of the Fifth Amendment. Pet.App.9a (quoting J.A. 22–23). The petition sought his immediate release from detention. Pet.App.9a (citing J.A. 25). Several weeks later, in an amended petition, Dr. Suri additionally alleged that he was being held in "degrading and harmful conditions," including sleep deprivation, poor nutrition, and unduly harsh treatment. Pet.App.9a–10a (quoting J.A. 125–26).

Shortly after filing his petition, Dr. Suri moved for release on bail, while the government moved to dismiss or transfer the case to Louisiana or Texas, arguing improper venue in Virginia. Pet.App.10a–13a. The court denied the government's motion. *See Suri v. Trump*, 785 F. Supp. 3d 128, 133–49 (E.D. Va. 2025).

The court then held a bail hearing and subsequently ordered Dr. Suri's immediate release pending further litigation of his habeas petition. Pet.App.91a–92a, 116a–126a; *Suri v. Trump*, No. 25-cv-480, 2025 WL 1392143, at *1 (E.D. Va. May 14, 2025). The court found, based on "uncontroverted" evidence, that the government had "retaliate[d] against and punish[ed]" him for his protected speech; that he was likely to succeed on his constitutional claims (which the government had "declined to dispute [on] the merits") under the First and Fifth Amendments; that Dr. Suri was neither a flight risk

or danger; and that his temporary release was necessary to make the habeas remedy effective. Pet.App.117a–126a. The court conditioned release on Dr. Suri's continued participation in removal proceedings. Pet.App.125a.

D. Court of Appeals Proceedings

The government moved to stay the district court's release order, but a Fourth Circuit motions panel denied the request. Pet.App.130a–152a. More than a year later, a Fourth Circuit merits panel affirmed the district court's decision in full. Pet.App.1a–65a. As relevant here, the court held that none of the statutory provisions invoked by the government stripped the district court of subject matter jurisdiction over Dr. Suri's habeas claims challenging his detention. Pet.App.33a–62a.

First, the court concluded the plain text of 8 U.S.C. § 1252(g) applies to claims arising from only three discrete and enumerated actions concerning removal and "does not speak to detention at all." Pet.App.35a–44a (quoting *Öztürk v. Hyde*, 155 F.4th 187, 208 (2d Cir. 2025) (Nathan, J., concurring in the denial of en banc rehearing); *see Reno v. American-Arab Anti-Discrimination Comm.* (*AADC*), 525 U.S. 471, 482 (1999).

Second, the court held that 8 U.S.C. § 1252(b)(9) did not strip the district court of subject-matter jurisdiction. Pet.App.44a–61a. The Court explained that the requirements under § 1252(b), including (b)(9), apply only to review of orders of removal, and none had (or has) been issued yet in Dr. Suri's immigration case. Pet.App.44a-46a; *see* Pet.App.61a (same as to 8 U.S.C. § 1252(a)(5)). It also held that,

even if § 1252(b)(9) applied, it did not bar Dr. Suri's Fifth Amendment challenges to his detention and conditions of confinement, which had no bearing "on any order of removal that may ultimately be issued against him," while emphasizing that the district court's bail order "specifically required" Dr. Suri to "participate in his removal proceedings as a condition of his release." Pet.App.51a–52a (citation modified). And it concluded that § 1252(b)(9), similar to § 1252(g), did not bar Dr. Suri's First Amendment challenge to detention because whatever the degree of "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"—detention and removal—and therefore his First Amendment detention challenge did not "arise out of" his removal and was not channeled by § 1252(b)(9). Pet.App.52a–54a.

Finally, the court rejected the government's interpretation of § 1252(b)(9) because barring Dr. Suri from presenting his detention claims in habeas "would deprive Suri of any meaningful chance for judicial review," Pet.App.54a (quoting *Jennings*, 583 U.S. at 293). It offered two primary reasons: First, because the immigration courts' limited jurisdiction does not allow them to decide constitutional claims, let alone develop a pertinent factual record, Pet.App.53a; and second, because deferring his detention challenges until after immigration proceedings would be "'absurd,'" for it "would leave him with no recourse for his unlawful detention" at all, since "'[b]y the time a final order of removal [would be] eventually entered, the allegedly excessive detention would have already

taken place.'" Pet.App.53a–54a (alterations in original) (quoting *Jennings*, 583 U.S. at 293).

Judge Wilkinson dissented, expressing a view that §§ 1252(g) and (b)(9) both barred Dr. Suri's claims in full. Under his reading of the Immigration and Nationality Act ("INA"), "[w]hen an alien challenges the government's decision to detain him at the start of [immigration] proceedings, his claim arises from them," which "means a district court sitting in habeas may not hear it." Pet.App.66a. As a result, he concluded Dr. Suri "must wait and raise his arguments—however meritorious—before a court of appeals in a petition for review of a final order of removal." Pet.App.66a.

REASONS FOR DENYING THE PETITION

I. THE GOVERNMENT OVERSTATES THE PURPORTED CIRCUIT SPLIT.

Petitioners do not even contend that there is a circuit split on one of the two provisions it puts at issue in its question presented, § 1252(g). And as to the other, § 1252(b)(9), there is no clean split between the Third and Fourth Circuits. Review would be premature and unwise, especially because the Court will have an opportunity for review if a clean split actually develops.

A. The Circuits Agree that 8 U.S.C. § 1252(g) Does Not Bar Detention Claims.

There is unanimity in the courts of appeals that 8 U.S.C. § 1252(g) does not bar detention claims raised in habeas petitions. *See, e.g.*, *Kong v. United States*, 62 F.4th 608, 609 (1st Cir. 2023); *Bello-Reyes*

v. Gaynor, 985 F.3d 696, 700 n.4 (9th Cir. 2021); *Kellici v. Gonzales*, 472 F.3d 416, 419–20 (6th Cir. 2006); *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006); *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999). As the Fourth Circuit noted, "[t]ime and time again," this Court "has stressed that § 1252(g) is a 'narrow' bar to judicial review on three very specific actions" relating to removal. Pet.App.44a (quoting *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020)). All of the above courts have agreed detention is not one of them.

Even in the narrower context of recent claims challenging immigration detention as retaliatory and punitive, there is no split. While the Fourth Circuit held that § 1252(g) does not bar such claims, agreeing with a Second Circuit stay opinion, *see Öztürk v. Hyde*, 136 F.4th 382, 398 (2d Cir. 2025) (denying stay pending appeal), the Third Circuit in *Khalil* explicitly declined to address the government's § 1252(g) argument, *see Khalil*, 164 F.4th at 273, as did a Second Circuit panel opinion now subject to sua sponte en banc rehearing, *see Mahdawi v. Trump*, 183 F.4th 103, 113 n.9 (2d Cir. 2026).

The government therefore resorts to asserting "tension," rather than a clear split, Cert.Pet.21, between the Fourth Circuit's decision below and the Eleventh Circuit's opinion in *Alvarez v. ICE*, 818 F.3d 1194 (11th Cir. 2016). But there is no tension. To start, in an earlier case not addressed in *Alvarez*, the Eleventh Circuit had already squarely held that "a constitutional challenge [in habeas] to [a noncitizen's] detention and impending removal" was not barred by § 1252(g). *Madu*, 470 F.3d at 1368. Further, *Alvarez* was a *Bivens* suit for damages against individual

immigration officers and a government lawyer, not a habeas action seeking release from detention. *Alvarez*, 818 F.3d at 1199; *see* Pet.App.40a n.17. And on the detention-related damages claims most similar to Dr. Suri's, *Alvarez* is consistent with the Fourth Circuit's opinion here: It held § 1252(g) did not bar the plaintiff's claim that certain officials "took various steps in order to prolong his detention" and delay execution of his removal order without regard for flight risk and danger, in violation of the Fifth Amendment. *Alvarez*, 818 F.3d at 1204. Its conclusion that a claim of allegedly punitive detention did not "arise from the decision to execute removal," *id.* at 1205, is consistent with the decision below and many others that have held § 1252(g) does not bar such claims. Most important, none of the *Alvarez* plaintiff's claims challenged the lawfulness of ongoing detention or sought release from custody as a remedy. *See* 818 F.3d at 1203.

B. There Is No Clean Split on the Section 1252(b)(9) Issue.

1. As an initial matter, the government asserts at best a shallow 1–1 split on a single issue: whether § 1252(b)(9) bars habeas jurisdiction over detention "claims that also go to the validity of" removal. Cert.Pet.(I). Even if there were a clean split on that question—and as set forth below, there is not—this Court's review would be premature.

2. There is not a clean split. Despite the superficial similarity in the government's use of the foreign policy ground in both cases to retaliate against two noncitizens' political speech, the Fourth Circuit's opinion below and the Third Circuit's decision in

Khalil do not squarely conflict on the § 1252(b)(9) question raised by the government, because the Fourth Circuit simply did not address it.

As the Third Circuit decided it, *Khalil* is fundamentally a case about a noncitizen's challenge to removal and removal proceedings, not detention. That case involved two consolidated appeals: one from a preliminary injunction that barred *both* petitioner's detention and removal based on the sole finding that the government's use of the foreign policy ground against the petitioner was unconstitutionally vague under the Fifth Amendment, and the other from a subsequent district court order granting bail. *See* 164 F.4th at 267. But the Third Circuit's opinion is directed almost entirely at the broad preliminary injunction, even remarking that while the petitioner did independently seek release from detention on bail, "that is a remedy, not an independent claim." *Id.* 276. So the Third Circuit was reviewing the principal order before it: a preliminary injunction that focused on the validity of the removal ground as unconstitutionally vague and that conflated Mr. Khalil's detention and removal claims. *See Khalil v. Trump*, 786 F. Supp. 3d 871, 874 (D.N.J. 2025) (articulating injunction against removal charge); *see* Cert. Pet. 35–37, *Khalil v. Trump*, No. 26-530 (Oct. 19, 2026) (seeking certiorari on removal claim); *see also Khalil v. Trump*, 164 F.4th at 276 (addressing a separate overlapping claim, also not at issue in the decision under review here, that the petitioner could not be removed or detained because the government was unlawfully "targeting him under a policy of punishing aliens' pro-Palestinian speech").

Critically, the Third Circuit only addressed what it called the petitioner's "detention-specific claim" in a

single paragraph, concluding that it "just repackages his challenges to his removal." *Id.* at 277. The Third Circuit reasoned that Mr. Khalil's "detention" claim was "[i]n essence," an "argu[ment] that [the petitioner's] detention is impermissible retaliation and unlawful *because it depends on the unconstitutionally vague foreign policy ground*." *Id.* (emphasis added). And it expressed concern about an interpretation of § 1252(b)(9) that would allow the petitioner to "claim[] that the INA section that made him removable was unconstitutionally vague…right away on habeas," and, "[w]ith a final judgment in hand,…use issue preclusion or law of the case in the later PFR, leaving that court nothing to decide." *Id.* at 275. On that understanding, the Third Circuit concluded that the petitioner's "'punitive detention' claim rises or falls with" his removal claims, and that the petitioner could not "plead around § 1252(b)(9) by calling his challenge to removal a challenge to his detention." *Id.*

The detention claims that the Fourth Circuit reviewed here simply do not raise that question. Despite the government's attempt to elide this point by arguing that Dr. Suri's detention claims target "his apprehension, detention, and removal," Cert.Pet.15, and a "Policy" inescapably affecting both detention and removal, Cert.Pet.10, the Fourth Circuit rightly rejected that framing. In addition to Dr. Suri's conditions-of-confinement claim, the Fourth Circuit exclusively addressed his two detention-only claims: that the government violated his Fifth Amendment due process rights because it had no legitimate justification to detain him, such as flight risk or danger, and that, even if the government could

lawfully remove him, the government unconstitutionally detained him in retaliation for his First Amendment–protected speech. Pet.App.42a–43a, 58a–59a.

And the court was clear that no part of its decision, or the district court's, passes on the merits of the government's removal case. To the contrary, the Fourth Circuit noted that "Suri is *not* arguing that he may not be detained pending removal because he may not be removed," but "that *even if* he can be removed, the decision to detain him pending removal is independently constitutionally flawed." Pet.App.58a (emphasis added); *see* Pet.App.103a (district court similarly describing claim it was addressing).[2] "Moreover," it explained, Dr. "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." Pet.App.58a–59a. The Fourth Circuit thus properly recognized the independence of those claims from claims that also go to removal.

By contrast, the Third Circuit understood itself to be reviewing something very different—a preliminary injunction directed against the removal ground—in holding that § 1252(b)(9) was a bar. Indeed, the Third Circuit specifically noted that, "[t]o be sure, some

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[2] *See* Pet.App.52a ("Suri's due process claims arise from whether his detention was justified, not from the Government's decision to seek removal.…Whatever the "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" (citing *Öztürk*, 136 F.4th at 399)).

claims *can* be detention-specific" and therefore avoid the reach of § 1252(b)(9), "like…length-and conditions-of-confinement claims." *Khalil*, 164 F.4th at 277.[3] Dr. Suri's are just such claims.

In short, the Third Circuit's decision in *Khalil* and the decision below decided different questions under § 1252(b)(9), and so there is no split.[4]

II. PETITIONERS VASTLY EXAGGERATE THE IMPACT OF THE DECISION BELOW.

Contrary to the government's doomsday predictions, the court of appeals' decision does not effect any change for the "tens of thousands" of

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[3] That Dr. Suri's claims were filed shortly after he was detained does not distinguish his claim from the petitioners' in *Jennings*. It makes little sense to interpret the text of § 1252(b)(9) to allow Fifth Amendment claims challenging detention that becomes unconstitutional because it is "prolonged," *Khalil*, 164 F.4th at 277 (acknowledging this as the holding in *Jennings* and accepting that § 1252(b)(9) does not channel such claims); *accord Mahdawi*, 183 F.4th at 121, but to bar Fifth (or First) Amendment claims challenging detention that is unconstitutional on day two (or from the start). Yet that is what the government's reading of the statute does.

[4] The *Khalil* petitioner's partial focus on detention claims in his petition for certiorari, No. 26-530, is completely understandable, as the core detention-only claims he raised in his petition that are akin to Dr. Suri's went essentially unaddressed by the district court or the Third Circuit. *See Khalil v. Trump*, 176 F.4th 295, 298 (3d Cir. 2026) (Krause, J., dissenting from denial of en banc review) (criticizing the panel for "Mischaracterizing Khalil's Detention-Specific Claim" and explaining that "it is the panel majority that repackages the claim actually pleaded"). That result counsels not in favor of a premature grant of certiorari here, but a grant, vacatur, and remand to the Third Circuit in *Khalil* to squarely address those claims in the first instance.

noncitizens who are detained every year by ICE. Cert.Pet.4, 22–23. Such noncitizens have always had the right to challenge the lawfulness of their detention through habeas petitions under 28 U.S.C. § 2241, and the decision below does not change that. And to the extent the government is concerned about any overlap in legal issues with removal, this concern arises only in the handful of exceptional cases in which the government has used immigration detention to retaliate against a noncitizen's First Amendment–protected speech, where the government also seeks to remove them for that speech. Respondent is only aware of roughly a dozen such cases—many of which emanate from a single set of highly related and contemporaneous facts. *See generally Am. Ass'n of Univ. Profs. v. Rubio (AAUP)*, 802 F. Supp. 3d 120 (D. Mass. 2025) (describing government efforts, mostly between March and May 2025, to detain and seek the removal of noncitizens who had engaged in speech in support of Palestinian rights). Moreover, in those rare cases, the need for immediate federal habeas review of detention is buttressed by the irreparable and ongoing harms of censorship, and the government has no legitimate interest in effectuating viewpoint discrimination in the United States. In any event, while there is no clean split on the questions the government presents, the Court will have an opportunity to consider them if and when a split does develop. The en banc Second Circuit will imminently hear *Mahdawi v. Trump*, *see* Order, No. 25-1113 (2d Cir. Sept. 11, 2026), Dkt. No. 246 (setting argument for Dec. 16, 2026), and there are cases pending in other circuits (and district courts) that present similar questions about § 1252. *See, e.g.*, *Sarsour v. Swearingen*, No. 26-2684 (7th Cir.); *Hoque v. Trump*,

No. 25-2516 (8th Cir.); Mem., *Doe v. Acuna*, No. 26-cv-2680 (W.D. La. Sep. 25, 2026), ECF No. 29; *see also, e.g.*, *Ahmed v. Rubio*, No. 26-2509 (2d Cir.); *see also Am. Ass'n of Univ. Profs. v. Rubio*, Nos. 26-1141 & 26-1195 (1st Cir.) (non-detainee challenge implicating the same provisions of 8 U.S.C. § 1252); *Coal. for Indep. Tech. Rsch. v. Rubio*, No. 26-5324 (D.C. Cir.) (same).

III. THE DECISION BELOW IS CORRECT.

This Court has repeatedly upheld the basic principle that "[i]n our society, liberty is the norm." *United States v. Salerno*, 481 U.S. 739, 755 (1987). And since 1789, the federal habeas statute, 28 U.S.C. § 2241, has authorized district courts to issue writs of habeas corpus against executive detention. Whether in the context of criminal pretrial detention, *see Salerno*, 481 U.S. 739, or other civil detention contexts, *see Bell v. Wolfish*, 441 U.S. 520, 539 n.20 (1979), including immigration detention authorized by statute, *see Zadvydas*, 533 U.S. at 690, the Constitution demands that detention other than by criminal sentence must be justified by a legitimate purpose and cannot be punitive.

Against this backdrop, the Court has installed guardrails when courts are asked to interpret statutes to strip habeas jurisdiction over claims challenging executive detention, where "the need for collateral review is most pressing." *Boumediene v. Bush*, 553 U.S. 723, 783 (2008); *see INS v. St. Cyr*, 533 U.S. 289, 301, 314 (2001). The guardrails include (i) "the strong presumption in favor of judicial review of administrative action," (ii) "the longstanding rule requiring a clear statement of congressional intent to

repeal habeas jurisdiction," (iii) the rule that a "clear indication" of congressional intent is expected when a proposed interpretation would push "the outer limits of Congress' power," and (iv) the canon of constitutional avoidance. *St. Cyr*, 533 U.S. at 289–90. In interpreting such statutes, the Court has consistently recognized the grave constitutional questions that would be raised were Congress to shut off a noncitizen detainee's path through habeas to challenge unlawful executive detention. *See, e.g.*, *Zadvydas*, 533 U.S. at 689; Pet.App.33a–34a.

With those presumptions in mind, this Court has repeatedly rejected claims that the INA prohibits noncitizens from challenging their immigration detention as unlawful or unconstitutional during, or even after, their removal proceedings. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022); *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021); *Nielsen*, 586 U.S. at 401–04; *Jennings*, 583 U.S. at 292–96; *Demore*, 538 U.S. at 516–17; *Zadvydas*, 533 U.S. at 688; *Clark v. Martinez*, 543 U.S. 371 (2005). And following this Court's lead, the circuit courts have consistently reviewed such claims in habeas. *See, e.g.*, *Black v. Decker*, 103 F.4th 133, 138–139 (2d Cir. 2024); *Kong v. United States*, 62 F.4th 608, 609 (1st Cir. 2023); *Miranda v. Garland*, 34 F.4th 338, 352–53 (4th Cir. 2022); *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 210 (3d Cir. 2020); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1079 (9th Cir. 2006).

In the decision below, the Fourth Circuit correctly held that 8 U.S.C. § 1252 does not preclude judicial review of Dr. Suri's constitutional challenges to his detention. The government argues that, in channeling review of legal questions arising from *removal*

proceedings into a petition for review, Congress silently intended to bar review of claims challenging unlawful *detention* aimed at censoring speech. Cert.Pet.14–15. But 8 U.S.C. §§ 1252(g) and (b)(9) do not sweep so broadly. Indeed, "every time the Government has tried to invoke these *removal*-focused jurisdiction-stripping provisions to foreclose challenges to immigration *detention*, [this] Court has balked." Pet.App.34a. Citing an "unbroken line of caselaw" from this Court along with "common sense," the Fourth Circuit explained that "if a noncitizen is challenging their detention pending removal, then waiting for their removal proceedings does them no good, as "[t]hey have already been detained, allegedly in violation of the Constitution." Pet.App.35a. That "'absurd' reading of the INA would make such detention claims 'effectively unreviewable,'" a consequence that this Court "has repeatedly refused to embrace." *Id.* (quoting *Jennings*, 583 U.S. at 293).

A. Section 1252(g)'s Narrow Jurisdictional Bar Does Not Preclude Habeas Review of Dr. Suri's Detention Claims.

Section 1252(g) is "narrow" and "applies only to three discrete actions" that are subject to the Attorney General's prosecutorial discretion to bring removal cases: a decision "to 'commence proceedings, adjudicate cases, or execute removal orders.'" *AADC*, 525 U.S. at 482 (quoting 8 U.S.C. § 1252(g)) (emphases removed), 485 n.9; *Jennings*, 583 U.S. at 294 (§ 1252(g) "refer[s] to just those three specific actions themselves"); Pet.App.35a–36a. As Justice Scalia recognized, there are a host of other "decisions or actions that may be part of the deportation process," but "[i]t is implausible that the mention of

three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings." *AADC*, 525 U.S. at 482; *accord Regents*, 591 U.S. at 19. Instead, § 1252(g) was "clearly designed to give some measure of protection to 'no deferred action' decisions and similar discretionary determinations" that interfere with prosecutorial discretion to seek a noncitizen's removal. *AADC*, 525 U.S. at 485.

Consistent with that precedent, the Fourth Circuit held that § 1252(g) does not bar review of Dr. Suri's detention claims because the government's decision to detain Dr. Suri is "legally separate from the Government's decision to begin removal proceedings" and is "wholly independent of the removal process." Pet.App.36a. *Contra* Cert.Pet.15 (calling Dr. Suri's detention claims "substantively identical" to claims challenging the commencement of proceedings). And § 1252(g) "does not speak to detention *at all*." *Öztürk*, 155 F.4th at 208 (Nathan, J., concurring in the denial of en banc rehearing). That is sufficient to remove Dr. Suri's claims from its ambit. *Cf. Demore*, 538 U.S. at 516–17 (holding that 8 U.S.C. § 1226(e), the one jurisdiction-stripping provision in the INA that explicitly references detention claims and, unlike 8 U.S.C. § 1252, is situated in the detention statute, does not strip habeas review of detention claims).

This division makes "practical sense," Pet.App.42a, because the decision to detain and the decision to remove are entirely legally distinct, Pet.App.37a. Detention and removability are "each governed by different provisions and justified on different grounds." Pet.App.39a; *compare* 8 U.S.C.

§ 1226 (detention statute), *with* 8 U.S.C. § 1227 (grounds of deportability) *and* 8 U.S.C. § 1182 (grounds of inadmissibility); *see* 8 C.F.R. § 1003.14(a) (providing removal proceedings commence upon filing a charging document with the immigration court without reference to detention). They are tied to separate administrative proceedings. *Compare* 8 C.F.R. § 1003.19 (custody redetermination hearings, if available), *with* 8 U.S.C. § 1229a (removal proceedings). In substance, the decision to detain pending removal must be justified on a separate basis, distinct from removability, that the person poses a flight risk or danger. *See Zadvydas*, 533 U.S. at 690; *cf.* 8 U.S.C. § 1229a(c)(3) (DHS must establish deportability by clear and convincing evidence). And while removal challenges can be heard in a petition for review of a final order of removal, challenges to detention "have no place and cannot be heard in removal proceedings." Pet.App.42a.

In practice, this means that the government routinely initiates removal proceedings against individuals based on a prima facie determination that they are removable, without detaining them. *See, e.g.*, Pet'rs' Br. *8–9, *United States v. Texas*, No. 22-58, 2022 WL 4278395 (Sup. Ct. Sep. 12, 2022) (noting that "perennial constraints on detention capacity" prevent the executive from detaining everyone subject to removal). Most people in removal proceedings are not detained at all. *See, e.g.*, Transactional Records Access Clearinghouse, *Detention Drops As New Immigration Court Cases Surge* (June 26, 2026), https://perma.cc/ZNR4-M8RL. Indeed, the government asserts the authority to detain people before deciding to initiate removal proceedings. *See,*

e.g., 8 C.F.R. § 287.3(d) (contemplating a brief initial period of detention before DHS determines whether to issue a Notice to Appear).

Ultimately, the government cannot point to a single appellate decision that has adopted its reading of § 1252(g). Nor can it identify "a single case holding that § 1252(g) strips jurisdiction over a First Amendment retaliation challenge to unlawful detention." Pet.App.42a (citation modified); *cf. Khalil*, 164 F.4th at 273 (declining to address § 1252 (g)); *Mahdawi*, 183 F.4th at 113 n.9 (same). The government proposes "a new broad and unnatural reading" of (g) that would allow a nebulous allegation of hypothetical overlap to rewrite an explicitly limited statute. Pet.App.44a. The Fourth Circuit was correct to reject it.

B. Section 1252(b)(9) Does Not Bar Retaliatory and Punitive Detention Claims, Which Cannot Get Meaningful Review on a Petition for Review.

The Fourth Circuit correctly held that 8 U.S.C. § 1252(b)(9) does not apply because there is no final order of removal, and because construing it to bar Dr. Suri's detention claims would deprive him of "any meaningful chance for judicial review." Pet.App.54a (citing *Jennings*, 583 U.S. at 293).

1. First, the text makes clear that § 1252(b)(9) only applies where there is a final order of removal. The subsection is located within § 1252(b), which is titled "Requirements for review of orders of removal" and "sets out that the 'following requirements apply' '[w]ith respect to review of an order of removal under subsection (a)(1).'" Pet.App.44a (quoting § 1252(b)).

"So, the provisions that follow," including § (b)(9), "are requirements that apply only to the review of a final order of removal," which is not at issue here. Pet.App.44a.; *see* Pet.App.47a–48a. Reviewing "the specific context in which that language is used, and the broader context of the statute as a whole," makes clear that § 1252(b)(9) does not apply. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997).

The government reads § 1252(b)(9) to bar *all* "judicial review" of *anything* remotely related to removal "*until* there is an order of removal, because that is the sole means for obtaining judicial review." Cert.Pet.18 (emphasis added). That reading ignores not just the "title," Cert.Pet.18, but the very first words of § 1252(b) and its other subsections, which reinforce its application only to "review *of*" final orders of removal. 8 U.S.C. § 1252(b) (emphasis added); *see Jennings*, 583 U.S. at 320–21 (Thomas, J., concurring in part) (acknowledging that his contrary view contravenes the prefatory text). And limiting § 1252(b)(9) to review of final orders does not read the phrase "or such questions of law and fact" out of the statute. *See* Cert.Pet.18. As the Court has recognized, that language could still refer to the legal and factual issues that arise in litigation after a final order of removal is issued, for example in administrative removal or reinstatement of removal proceedings involving protection claims.

2. Even if § 1252(b)(9) applies pre-final order, the Fourth Circuit correctly held, in the alternative, that § 1252(b)(9) does not channel review of Dr. Suri's detention claims because they do not "arise from" an "action taken…to remove" him. Pet.App.50a–54a. As the *Jennings* plurality explained, the phrase "arise

from" must be construed narrowly to avoid "extreme" results that would render claims of "excessive detention" "effectively unreviewable." *Jennings*, 583 U.S. at 293–94 (plurality opinion). That analysis applies directly here.

As Justice Alito warned, courts must "eschew[] uncritical literalism" when interpreting "capacious phrases like 'arising from'" in jurisdictional statutes, *id.* at 293–94 (plurality opinion) (cleaned up) (collecting cases), in favor of limiting constructions that give effect to "the broad scope Congress intended while avoiding…susceptibility to limitless application," *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 320 (2016); *see Regents*, 591 U.S. at 19 (emphasizing that (b)(9)'s "targeted language" is "narrow"). That is what this Court did in reading the "very phrase" "arising from" in § 1252(g). *See Jennings*, 583 U.S. at 294 (discussing *AADC*); *see also United States v. Hansen*, 599 U.S. 762, 775 (2023) (when addressing the "specialized meaning" of statutory terms, courts must consider "the water in which they swim"). And where Congress sought to bar claims more broadly, it knew how to do so. *See* 8 U.S.C. § 1252(a)(2)(A)(i) (barring review over issues "arising from *or relating to* the implementation or operation" of an expedited removal order (emphasis added)).

Section 1252(b)(9) channels "all questions of law" that "aris[e] from" removal actions or proceedings into a petition for review. But unlike the "inextricably intertwined" legal questions about removal and detention raised by the vagueness claim against the foreign policy removal ground in *Khalil*, Cert.Pet.14 (citation omitted); *see supra* I.B, the legal questions that "arise from" Dr. Suri's detention claims are

different from the legal questions raised in a petition for review of a final removal order. Because of those differences, a district court's ruling on these questions will not allow a noncitizen to "circumvent[] the INA's careful jurisdiction-channeling scheme" through the completely speculative use of preclusion. Cert.Pet.16. This is clear in two ways.

First, the government entirely ignores Dr. Suri's Fifth Amendment due process challenge to detention, which is "wholly independent of his First Amendment retaliation claim." Pet.App.42a. The legal questions that arise from this claim—whether his detention is reasonably related to a legitimate government purpose, such as mitigating flight risk or danger, *see Zadvydas*, 533 U.S. 678—are what the district court evaluated in its bail decision, Pet.App.122a–24a, but they are not even arguably "the same legal questions that go to the legality of his removal," yielding no opportunity whatsoever to "front-run the PFR process," Cert.Pet.3. Indeed, if a habeas court eventually ruled (as the district court did here preliminarily) that Dr. Suri could not be detained due to lack of flight risk or danger, that ruling would have no impact on eventual court review of a final removal order, *if there ever is one* (as Dr. Suri might succeed in the BIA on statutory arguments against removal, or in claims for relief from removal). Construing 8 U.S.C. § 1252(b)(9) (or (g)) to bar such claims would mean that, "by simply asserting a First Amendment retaliation claim in his removal proceedings," Dr. Suri would be precluded from bringing a First Amendment retaliation detention claim *as well as* any independent due process claims or challenges to the conditions or duration of his confinement. Pet.App.42a–43a. The

results of that reading of the statute would be "staggering," *Jennings*, 583 U.S. at 293.[5]

Second, the legal questions raised in Dr. Suri's First Amendment challenge to his detention are "distinct from" his (yet-to-be-litigated) First Amendment challenge to 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." Pet.App.58a. And "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. To read (b)(9)'s "arising from" language, against this Court's command to read it narrowly, *see Jennings*, 583 U.S. at 293 (plurality opinion), to fold

[5] The dissent below acknowledges that Dr. Suri's due process claims are distinct from his First Amendment claims, but posits that, because they would not exist *but for* his initial detention and placement in removal proceedings, they still "arise from" removal and are barred. Pet.App.74a–75a. This breathtaking position, which *Jennings* squarely rejected, 583 U.S. at 293 (plurality opinion) (criticizing position taken in concurrence), would eviscerate habeas for all immigration detention claims.
And relatedly, *Jennings* did not somehow hold, in dicta, that challenges to the "decision to detain" are barred by § 1252(b)(9). *Contra* Cert.Pet.15–16. In fact, in later applying *Jennings*, the Court has not cited the plurality's dicta, instead holding (this time with a Court majority) only that "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." *Regents*, 591 U.S. at 19 (citation modified). Dr. Suri's detention claims challenge none of those things.

in a countertextual notion of hypothetical overlap would do violence to the text simply because "two courts may be asked similar questions," *Suri v. Trump*, No. 25-1560, 2025 WL 1806692, at *1 n.1 (4th Cir. July 1, 2025).

3. Though it does not press the point in its petition, the government has defended § 1252(b)(9)'s supposed channeling of detention claims on the grounds that "meaningful review," Cert.Pet.19, of those claims is available in administrative immigration proceedings and ultimately on a petition for review in a court of appeals. *See* App.61a (citing *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 191–92 (2023)); *Khalil v. Joyce*, 780 F. Supp. 3d 476, 509–16 (D.N.J. 2025) (discussing *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994), and other precedent in connection with the "meaningful review" required under the INA).

The government is wrong. Neither immigration judges nor the Board of Immigration Appeals have jurisdiction to decide constitutional issues, nor can they develop a sufficient factual record for expeditious review by the court of appeals. Pet.App.59a; *see Öztürk*, 136 F.4th at 400–01; *Khalil*, 164 F.4th at 280; *see also Matter of M-K-*, 29 I&N Dec. 556, 561–63 (BIA 2026) (refusing to look behind the Secretary of State's foreign policy ground determination and stating instead that constitutional challenges may only be raised on a PFR). And while courts of appeal can review such claims, "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." Pet.App.59a–60a (quoting *Khalil*, 164

F.4th at 280); *see Khalil v. Trump*, 176 F.4th at 300–01 (Krause, J., dissenting from denial of en banc review) (explaining why such mechanisms are speculative and "shaky foundations" for "meaningful review").[6]

4. In the end, the government's reading of § 1252(b)(9) is wrong because it would do exactly what this Court held the statute cannot do in *Jennings*: bar detention claims that would become "effectively unreviewable" because, by the time a final order of removal is entered, the unconstitutional detention "would have already taken place," and thus petitioners would be deprived of any "meaningful chance for judicial review." 583 U.S. at 293 (plurality opinion). "Suri's core argument is that his free speech and due process rights are being violated, *now*," and by the time a final order of removal is entered, the unlawful detention and attendant censorship of speech would have already taken place. Pet.App. 54a (citation modified) (citing *Jennings*, 583 U.S. at 293 (plurality opinion)); *see Shuttlesworth v. Birmingham*, 394 U.S. 147, 163 (1969) (Harlan, J., concurring) ("[T]iming is of the essence in politics…[W]hen an event occurs, it is often necessary to have one's voice heard promptly, if it is to be considered at all."). "Even if Suri prevails in his removal proceedings" and no removal order is entered, "the Government's reading of § 1252(b)(9) would leave him with no recourse for

[6] In *Mahdawi*, the panel suggested that a noncitizen charged with the foreign policy ground could obtain sufficient review of their detention claims through a "*Joseph* hearing." 183 F.4th at 121; *see Demore v. Kim*, 538 U.S. 510, 514 n.3 (2003). That is incorrect, but regardless, the government has not raised any such argument in this case. App.54a & n.25.

his unlawful detention." Pet.App.54a; *see Jennings*, 583 U.S. at 293 (plurality opinion).

That is especially so where, as here, retaliatory detention is designed to chill speech and effectively operates as a prior restraint. *See AAUP*, 802 F. Supp. 3d at 194; *cf. NRA v. Vullo*, 602 U.S. 175, 194 (2024) ("[T]hreaten[ing] to wield [government] power…. to punish [protected] advocacy…. violates the First Amendment."). If Petitioner's position were adopted, the government could pretextually detain any noncitizen during a fierce public debate on any issue and silence them and others when their speech would have most salience to public discourse. *See Elrod v. Burns*, 427 U.S. 347, 374 n.29 (1976). Such censorship cannot be remedied later.

C. The Government's Interpretation of § 1252 Raises Serious Concerns under the Suspension Clause.

Habeas "is at its core a remedy for unlawful executive detention." *DHS v. Thuraissigiam*, 591 U.S. 103, 119 (2020). Access to habeas is the strongest—and therefore the most difficult to displace through anything short of explicit and unambiguous congressional commands—when it comes to executive detention. *See Boumediene*, 553 U.S. at 783; *St. Cyr*, 533 U.S. at 301, 314. Its protections are particularly strong where, as here, Dr. Suri is detained "by executive order, rather than, say, after being tried and convicted in a court." *Boumediene*, 553 U.S. at 783. Congress may not strip federal courts of habeas jurisdiction unless it provides an adequate and effective alternative to habeas review. *Swain v. Pressley*, 430 U.S. 372, 381 (1977). Such an alternative

to habeas must—at the absolute minimum—provide a petitioner with "a meaningful opportunity to demonstrate that he is being held" unlawfully. *Boumediene*, 553 U.S. at 779.

The government nowhere mentions the Suspension Clause problem raised by its interpretation of 8 U.S.C. § 1252, and the dissent dispenses with it in a conclusory sentence, citing cases that only involve non-detention claims. Pet.App.82a. At issue here is the basic, fundamental right to challenge one's unlawful detention by the executive, where "the need for habeas corpus is more urgent." *Boumediene*, 553 U.S. at 783. As such, "the question [is] whether the statutory review procedures for…detainees seeking release from custody provide[] an adequate substitute for a habeas petition seeking release," *Thuraissigiam*, 591 U.S. at 127 (emphasis omitted), not whether a petition for review provides an adequate substitute for adjudicating similar legal and factual questions as those raised in the habeas petition.

Where this Court has found a habeas substitute to be adequate and effective, its "purpose and effect…was to expedite consideration of the [detainee's] claims, not to delay or frustrate it." *Boumediene*, 533 U.S. at 775–76; *see* 28 U.S.C. § 2243 (mandating speed in effectuating the habeas remedy). But a petition for review that allows Dr. Suri to challenge his illegal detention only indirectly, through review of the validity of his *removal* order, and only months or years after its punitive purpose and retaliatory chilling effect have been accomplished, is not an adequate or effective alternative to habeas. *See*

App.60a–61a; *see also Jennings*, 583 U.S. at 293 (plurality opinion).

In addition, because the purpose of habeas is to "restrain" the government's power, the scope of the substitute procedure must not be "subject to manipulation" by the government. *Boumediene*, 553 U.S. 765–66. But the government's reading of § 1252(g) and § 1252(b)(9) would permit abuse of the immigration system to circumvent the Great Writ, enabling the government to detain a noncitizen after levying a patently spurious immigration charge and forestalling federal court review of the unlawful detention by prolonging administrative removal proceedings (which the executive controls) and/or terminating them after it has accomplished its desired detention and censorship for whatever period of time it deems sufficient. The Fourth Circuit's interpretation of section 1252 avoids this serious conflict with the Court's Suspension Clause precedent by construing 8 U.S.C. § 1252 narrowly to permit review of Dr. Suri's detention claims.

D. The First Amendment Requires Timely Review of Censorship Claims.

This Court has repeatedly recognized, across a variety of contexts, that First Amendment claims challenging ongoing censorship and a chilling effect on the speech of others require timely review, because censorship once accomplished cannot be remedied later. *See, e.g.*, *Oesterich v. Selective Serv. Sys. Loc. Bd. No. 11*, 393 U.S. 233 (1968) (immediate review of withdrawal of draft exemption despite availability of administrative review); *Nat'l Socialist Party of Am. v. Vill. of Skokie*, 432 U.S. 43, 44 (1977) (denying review

would "deprive [petitioner] of rights protected by the First Amendment during the period of appellate review"); *see also, e.g.*, *First Choice Women's Res. Ctrs., Inc. v. Davenport*, 608 U.S. 174 (2026); *Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46, 55–56 (1989); *Dombrowski v. Pfister*, 380 U.S. 479, 487 (1965). And it is foundational that the government cannot wield law enforcement power in order to punish, censor, and chill the expression of political viewpoints in the United States. *See Vullo*, 602 U.S. at 194.

Dr. Suri's detention claims seek redress of First Amendment harms that are, by their very nature, irreparable. When here-and-now speech impacts are involved, "the Constitution requires immediate judicial intervention." AADC, 525 U.S. at 492 (Ginsburg, J., concurring in part); *see also Axon*, 598 U.S. at 191. But "delayed review" here "may mean no review at all." *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 47 (2000) (Thomas, J., dissenting). The Fourth Circuit was correct to hold that Dr. Suri's First Amendment claim against detention can be heard by a federal district court.

IV. IN THE ALTERNATIVE, THE COURT SHOULD HOLD THE PETITION.

On December 9, the Court will hear argument in *DHS v. D.V.D.*, in which the government has offered interpretations of §§ 1252(g) and (b)(9) that, whether accepted or rejected, could impact this case. *See* Pet'rs' Br. 15–23, *DHS v. D.V.D.*, No. 26-426 (Sup. Ct. Oct. 23, 2026); *see, e.g.*, *id.* at 22 (arguing that (b)(9) bars review even if claims cannot be "raised efficaciously within" removal proceedings and petitions for review). While the Court should deny the petition for the

reasons given above, in the alternative, the Court should hold the petition pending its resolution of *D.V.D.*, where it may elaborate on the meaning and reach of both statutes.

CONCLUSION

For the foregoing reasons, the Court should deny the petition for a writ of certiorari.

Respectfully Submitted,

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Dated: November 20, 2026