

No. 26A90

IN THE
Supreme Court of the United States

MAHMOUD KHALIL,

Applicant,

— V. —

DONALD J. TRUMP, ET AL.,

Respondents.

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

**SECOND APPLICATION FOR A 30-DAY EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI**

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To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court and Circuit Justice for the Third Circuit:

Pursuant to this Court's Rules 13.5 and 30.2, Applicant-Petitioner Mahmoud Khalil respectfully requests a second extension of time of 30 days in which to file a petition for a writ of certiorari to review the judgment of the Third Circuit Court of Appeals, from September 21, 2026 until October 21, 2026, due to recent and significant changes in the composition of Petitioner's legal team that occurred just days ago, described below.

In support of this motion, Mr. Khalil submits the following:

1. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).
2. On January 15, 2026, the U.S. Court of Appeals for the Third Circuit issued its decision vacating the district court's order granting petitioner habeas relief. That decision, along with concurring and dissenting opinions, is reported at 164 F.4th 259, and a copy is attached hereto (Appendix A).
3. Mr. Khalil filed a timely petition for rehearing en banc, which the court of appeals denied by a vote of 6 to 5 on May 22, 2026 (Appendix B).
4. In a May 26 order (Appendix C) and a June 4 clarification order (Appendix D), the court of appeals stayed the appellate mandate for 90 days from the date the court denied Mr. Khalil's petition for en banc review and for up to an additional 30 days should this Court grant any request for an extension of time to file his petition for certiorari. The court of appeals further indicated that if Petitioner

files a timely petition for a writ of certiorari, the mandate will be stayed pending this Court's final disposition of the petition.¹

5. On July 15, 2026, Mr. Khalil filed his first Application for a 30-Day Extension of Time to File a Petition for Writ of Certiorari, which this Court granted on July 27, 2026.

6. Pursuant to Supreme Court Rules 13.1 and 30.2, the petition for certiorari is currently due in this Court on September 21, 2026. This Application is timely filed under Rule 13.1. Mr. Khalil respectfully requests an additional 30-day extension, through October 21, 2026.

7. As explained in detail in Mr. Khalil's original application for an extension, the forthcoming petition arises from the government's detention and attempted removal of Mr. Khalil under 8 U.S.C. §§ 1182(a)(3)(C)(iii) & 1227(a)(4)(C) (the "Foreign Policy Ground" or "FPG"), based on a determination by Secretary of State Marco Rubio that Mr. Khalil's expressive activity, which was "otherwise lawful," would "compromise a compelling foreign policy interest" (the "Rubio Determination"). In litigation surrounding Mr. Khalil's petition for a writ of habeas corpus, the district court issued thorough opinions confirming its habeas and subject matter jurisdiction and, on June 11, granted a preliminary injunction prohibiting

¹ Should the Court grant this second 30-day extension application, Petitioner intends to ask the Third Circuit to extend the stay of the mandate through the time granted for a second extension and, should the Court grant the petition, until the Court finally disposes of it.

Respondents from detaining or seeking to remove Mr. Khalil based on the Rubio Determination. On June 20, the court ordered him released on bail.

On appeal, a divided panel of the Third Circuit reversed the district court's preliminary injunction and bail orders based solely on the majority's conclusion that a provision of the Immigration and Nationality Act, 8 U.S.C. § 1252(b)(9), strips federal courts of subject-matter jurisdiction over Mr. Khalil's First and Fifth Amendment challenges to not only his removal but also to his unlawful detention. All three members of the panel agreed the district court had habeas jurisdiction over the petition. No judge reached the merits of the district court's injunction or bail order.

8. The important federal issues presented by this case include whether 8 U.S.C. § 1252(b)(9) strips a district court of jurisdiction in habeas corpus over a constitutional challenge to detention where no federal court can review that detention absent such jurisdiction; and if so, whether this would violate the U.S. Constitution, including the Suspension Clause of the U.S. Constitution, art. I., § 9, cl. 2, and the First Amendment's requirement of speedy review where irreparable First Amendment harms are at issue.

9. These questions, among others, are worthy of careful consideration and should be developed for this Court's review. The same and similar questions are also currently before or have recently been decided by at least three other federal courts of appeal, and a clean circuit split has emerged. *See Mahdawi v. Trump*, No. 25-1113 (2d Cir.) (currently pending en banc review after a panel decision finding that § 1252(b)(9) stripped the court of jurisdiction); *Suri v. Trump*, No. 25-1560 (4th Cir.)

(affirming district court's finding of jurisdiction notwithstanding § 1252(b)(9)); *Hoque v. Trump*, No. 25-2516 (8th Cir.) (oral argument not yet scheduled). The government did not petition for rehearing en banc by the September 8, 2026 deadline in *Suri*.

10. A second extension of time is warranted here.

11. Counsel seek additional time in light of a significant change in Mr. Khalil's legal representation. Attorneys from the ACLU (which had been counsel of record for Mr. Khalil and primarily responsible for drafting his cert petition), its state affiliates, and the CLEAR Project are no longer representing Mr. Khalil in certiorari-stage proceedings in this Court because of a positional conflict that has recently arisen due to developments in a related case. Specifically, on September 3, the Second Circuit, acting sua sponte, granted rehearing en banc in *Mahdawi v. Trump*, No. 25-1113 (2d Cir. Sept. 3, 2026), Dkt. No. 244. Before that order, in *Mahdawi*, a panel had followed the court of appeals below in this case to conclude that federal district courts lack subject matter jurisdiction over a First Amendment and Due Process challenge to immigration-related detention. *See Mahdawi v. Trump*, 183 F.4th 103 (2d Cir. 2026). The ACLU and CLEAR continue to represent the petitioner in *Mahdawi*.

12. In light of Mr. Khalil's recent and unforeseen loss of lead counsel and numerous other members of his legal team, Petitioner's present counsel requires additional time to recruit co-counsel with additional expertise in litigating in front of this Court and time for any additional counsel to familiarize themselves with this voluminous record. Even if Petitioner's remaining counsel are unable to recruit co-

counsel, they would still need additional time in support of drafting the petition given the loss of a substantial number of their legal team, including counsel of record.

13. The government will not suffer prejudice from an additional extension of time. The district court's injunction has remained in effect since June 2025, and an additional 30 days will make no meaningful difference to the government, particularly where the government itself has sought and received extensions of time throughout the course of the litigation. Resp.-Appellants' Mot. for a 14-Day Extension of Time to File Resp. to Pet.'s Pet. for Reh'g En Banc at 3 (government filing emphasizing lack of harm from additional delay of appellate proceedings), *Khalil v. Trump*, No. 25-2162 (3d Cir. Apr. 8, 2026), Dkt. No. 149; *see also* Resp. Mot. for 30-Day Extension, *Khalil v. Blanche*, No. 26-60344 (5th Cir. Sept. 4, 2026), Dkt. No. 144 (seeking a 30-day extension of response brief deadline).

14. Moreover, the government did not seek rehearing en banc in the *Suri* case in the Fourth Circuit, which is a split with the decision below, by its due date of September 8, 2026. The government's deadline for filing a petition for certiorari from this decision is October 21, 2026. Accordingly, if Mr. Khalil is granted an additional 30-day extension to October 21, 2026, the dates for the corresponding petitions for certiorari would be aligned, and the government would thus suffer no prejudice from Mr. Khalil's new filing date.

For the foregoing reasons, Applicant-Petitioner Mahmoud Khalil respectfully requests an extension of the time to file a Petition for a Writ of Certiorari in this case for thirty days, up to and including October 21, 2026.

Dated: September 9, 2026

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