April 30, 2025

VIA ECF
Honorable Patricia Tolliver Giles
United States District Judge
Eastern District of Virginia
401 Courthouse Square
Alexandria, VA 22314

Re: Khan Suri v. Trump, et al., No. 1:25-cv-00480-PTG-WBP

Dear Judge Giles

Petitioner Dr Badar Khan Suri writes to notify the Court of three recent decisions relevant to its consideration of the motions pending in this case All three decisions pertain to the same unlawful policy under which Dr. Khan Suri has been arrested, detained, and transferred

1. *Mahdawi v. Trump*, 25-cv-00389-gwc (D. Vt. April 30, 2025)

In *Mahdawi v Trump*, Mr Mahdawi, a Palestinian student at Columbia University and lawful permanent resident of the United States, was arrested in Vermont and placed in deportation proceedings 25-cv-00389-gwc, at 5 (D Vt. April 30, 2025) Like Dr. Khan Suri, Mr Mahdawi's Notice to Appear charged him as deportable under U.S.C § 1227(a)(4)(C)(i) (rendering deportable a noncitizen "whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States") *Id* The agents attempted, but failed, to swiftly transfer him from Vermont to Louisiana. *Id.* at 6. Like Dr Khan Suri, Mr Mahdawi filed a habeas petition claiming that these actions were in retaliation for his protected speech in support of Palestinian rights or critical of Israel, *Mahdawi*, 25-cv-00389-gwc, at 18 (D Vt April 30, 2025), and also filed a motion for release under *Mapp v Reno,* 241 F 3d 221 (2d. Cir 2001)

In its April 30, 2025 order, the District of Vermont ordered Mr. Mahdawi released under *Mapp v Reno* and rejected the government's contention that it lacked jurisdiction over the petition under the INA, namely, 8 U.S C. §§ 1252(g), 1226(e), 1252(a)(5), 1252(b)(9)—which the Respondents have also raised in Dr. Khan Suri's case—holding that none of these provisions stripped the court of jurisdiction to review Mr Mahdawi's case

The court ruled that § 1252(g) "allows for the exercise of habeas jurisdiction in cases that do not seek to challenge the removal proceedings but are directed instead at administrative detention alleged to be employed to stifle protected speech." *Id* at 12. The court ruled that § 1226(e) "does not preclude review through habeas procedures of claims that administrative action violates the Constitution." *Id* at 13 The court ruled that § 1252(a)(5) did not apply because Mr Mahdawi "challenges only his arrest and detention—not the removal proceeding " *Id.* at 14 Finally, the court ruled that § 1252(b)(9) did not apply because the claim that the government arrested him to stifle speech was "separate from the removal procedures followed by immigration courts," and so the legal questions raised by his claims "did not 'arise from' the Government's decision to place him in removal proceedings " *Id* at 15

The court then conducted a *Mapp* analysis and ordered Mr. Mahdawi released for reasons that apply equally to Dr. Khan Suri's case. Of relevance to this Court, the court ruled Mr. Mahdawi had raised a substantial First Amendment claim because noncitizens enjoy First Amendment rights to the same extent as citizens, *id.* at 17, Mr. Mahdawi had engaged in protected speech regarding Israel's genocide in Gaza, *id.* at 18, and public statements by the government supported his claim that his arrest and detention were in retaliation for this speech, *id.* at 19-20. Similarly, the court ruled that he had raised a substantial Fifth Amendment claim because "[i]mmigration detention cannot be motivated by a punitive purpose[,]" and "[i]f the Government detained Mr. Mahdawi as punishment for his speech, that purpose is not legitimate." *Id.* at 22-23.

The court also found that extraordinary circumstances applied to his case, warranting release, just as they do to Dr. Khan Suri's case—including because he had strong ties to the Vermont community, and because he was a full-time graduate student. *Id.* at 23. The court went on to describe the serious and extraordinary issues these cases present.

> [noncitizens] not charged with crimes or misconduct . . are being arrested and threatened with deportation for stating their views on the political issues of the day. Our nation has seen times like this before, especially during the Red Scare and Palmer Raids of 1919-1920 that led to the deportation of hundreds of people suspected of anarchist or communist views. . . . [T]his case .. is extraordinary in the sense that it calls upon the ancient remedy of habeas to address a persistent modern wrong.

Id. at 24-25. Finally, the court ruled that release was necessary to make "habeas relief effective because keeping him in detention pending adjudication on the merits 'would ratify the chilling effect that the government intends to create.'" *Id.* at 25.

2. *Khalil v. Joyce*, 25-cv-01963-MEF-MAH (D.N.J. Apr. 29, 2025)

In *Khalil v. Joyce*, Mr. Khalil, a Palestinian student at Columbia University and lawful permanent resident of the United States, was arrested in New York by Immigration and Customs Enforcement ("ICE"), swiftly transferred to New Jersey and then to an immigration jail in Louisiana, and placed in removal proceedings. 25-cv-01963-MEF-MAH, at 5 (D.N.J. Apr. 29, 2025) (ECF 214) (attached). Like Dr. Khan Suri, Mr. Khalil's Notice to Appear charged him as deportable under U.S.C. § 1227(a)(4)(C)(i) (rendering deportable a noncitizen "whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States"). *Id.* at 3-4. Marco Rubio, the Secretary of State, had determined that Mr. Khalil was deportable under this provision. *Id.* at 4. Like Dr. Khan Suri, Mr. Khalil filed a habeas petition claiming that these actions were in retaliation for his protected speech, and done pursuant to an unlawful and vague policy to target noncitizens based on their speech in support of Palestinian rights or critical of Israel. *Id.* at 6-8. Mr. Khalil filed a number of motions, including a preliminary injunction motion requesting his release, and that the policy as well as the Rubio determination be set aside. *Id.* at 6-8.

In its April 29, 2025 order, the District of New Jersey rejected the government's contention that it lacked jurisdiction over the petition under the INA, namely, 8 U.S.C. §§ 1252(g) and 1252(b)(9)—which the Respondents have also raised in this case.

The court ruled that § 1259(b) did not strip it of jurisdiction to review the case for reasons that apply equally to Dr. Khan Suri's claims That provision only applies after a final order of removal has been issued, which, like in Dr. Khan Suri's case, it had not been in Mr Khalil's case *Id* at 10 In one case, the Third Circuit has held that § 1259(b)(9) applies even prior to a final order of removal, when the claim could still get "meaningful review" later on through immigration proceedings. But the District of New Jersey ruled that such delayed review would not be "meaningful" for two reasons. First, because immigration courts do not have the authority to review either the Secretary of State's determination that Mr. Khalil's presence in the United States would have adverse foreign policy consequences, or the existence, scope, application of the retaliation policy. *Id* at 10, 105-106 Second, because "the law requires sped-up judicial review of the First Amendment claims" raised by Mr Khalil. *Id* at 11.

The court also ruled that § 1252(g) did not strip it of jurisdiction to review the claims for reasons that apply equally to Dr Khan Suri's claims The court ruled that the claims did not challenge one of three specific actions that the provision bars review of. *Id* at 101 It did not challenge "a decision or action" to "execute" a removal order, because no such order has been entered *Id*. It did not challenge "a decision or action" to "adjudicate" a case *Id* at 102 And it did not challenge "a decision or action by the [Secretary of Homeland Security] to commence proceedings," because the action at issue was not that of the Secretary of Homeland Security, but of the Secretary of State, and the challenged policy predated any action by the Department of Homeland Security. *Id* at 102-104, 106

3. *American Assoc. of University Professors v. Rubio*, 25-cv-10685-WGY (D.Mass. Apr. 29, 2025)

In *American Assoc. of University Professors v Rubio*, plaintiffs challenged the defendants' policy of "arresting, detaining and deporting non-citizens who are otherwise here legally based solely upon their pro-Palestine or anti-Israel political speech." 25-cv-10685-WGY, at 2-3 (D.Mass Apr 29, 2025) (ECF 73) (attached) The plaintiffs alleged that, "[p]ursuant to this policy the [defendants] have arrested recent Columbia University graduate and lawful permanent resident Mahmoud Khalil and revoked the visas of at least four others . " *Id*. at 7 Dr Badar Khan Suri is one of those four *Id* at 14

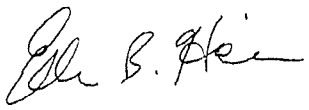
In addition to ruling that it had subject matter jurisdiction over the claims,[1] the District of Massachusetts rejected the defendants' motion to dismiss the plaintiff's First Amendment and Administration Procedures Act claims. Of relevance to this Court, the District of Massachusetts "assumes noncitizens lawfully present in the United States have at least the core rights protected by the First Amendment, chief among them the right to speak on political subjects at least where such speech poses no immediate threat to others." *Id*. at 57. It also reasoned that, although the policy at issue was not clearly written, "a speech code that is unwritten or vague but enforced with

[1] Among other jurisdictional rulings, the court ruled that 8 U S C. § 1252(g) did not bar review of the claim because the Plaintiffs' claims based upon the ideological-deportation policy are not brought "by or on behalf of any alien arising from" an enumerated deportation decision, and therefore this Court is not stripped of jurisdiction. *Id*. at 36.

harsh penalties would seem more likely to chill broad swaths of speech than one that clearly defines what is forbidden." *Id.* at 60

Dated: April 30, 2025

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Eden Heilman, hereby certify that on this date, I uploaded a copy of Petitioner's Notice of Supplemental Authority using the CM/ECF system, which will cause notice to be served electronically to all parties

Date April 30, 2025

Respectfully submitted,

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