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

BADAR KHAN SURI *Petitioner*, v. DONALD TRUMP, *et al.*, *Respondents.*	Case No. 1:25-cv-480

PETITIONER'S RESPONSE TO RESPONDENTS' SUPPLEMENTAL FILING

Pursuant to the Court's May 1, 2025 Order, ECF No 55, and in response to the Court's questions raised at the May 1st hearing, Respondents submit only a declaration from Mark Graham Assistant Field Office Director in the Richmond sub-office of the Washington Field Office (hereinafter "Graham Declaration") Respondents' filing fails to adequately answer the Court's questions. Instead, it supports Dr. Khan Suri's claim that Respondents made a pre-arranged plan to arrest Dr. Khan Suri the night before a "regularly scheduled charter flight" to Louisiana, ECF 57-1 at ¶ 14, and transfer him rapidly and secretly from Virginia to Louisiana and Texas in order to frustrate his ability to access his counsel and the courts This supports the application of the unknown custodian rule in this case

First, Respondents clarify that Dr Khan Suri was not booked into the Alexandria Staging Facility ("ASF") until 6:42 PM Eastern Time (5:42 PM Central Time) - nearly an hour *after* the petition was filed [1] Notably, the Graham Declaration still does not specify who ICE alleges Dr

[1] Respondents' successive omissions, in Mr Simon's initial and supplemental declarations, of highly material information regarding the precise time of Dr Khan Suri's booking in ASF provide

Khan Suri's immediate custodian was at the time of filing, prior to being booked into ASF The Graham Declaration describes that ICE uses charter flights to transport detainees, ECF 57-1 at ¶ 12, but is silent as to whether there is any immediate custodian with legal authority to release any detainee physically on the airplane while in transit Presumably, Respondents would have identified an immediate custodian by this point if one existed Thus, even taking Respondents' facts as true (despite the conflict with Dr Khan Suri's account of his arrival at ASF), Dr Khan Suri's immediate custodian was and remains either unknown and unknowable (in which case the proper respondent is the ultimate custodian), or his immediate custodian was the director of the Washington Field Office. In either case, Dr Khan Suri's petition was properly filed in this district, naming both the Secretary of Homeland Security and the Director of the Washington Field Office as respondents

Second, Respondents fail to adequately respond to all of the Court's questions, and the information they provide is internally contradictory and conflicts with information provided in the declarations previously submitted by Assistant Field Office Director Simon and with the evidence provided by the Petitioner Respondents' failure to provide clear, straightforward, and detailed answers to the Court's questions suggests that such answers, if given, would support Petitioner's allegations and justify relaxing the district of confinement rule in order to deter forum shopping by the government. Petitioner addresses certain deficiencies in Respondent's answers in turn

Question: Is it normal for a Notice to Appear to list the address of a detention facility as where the noncitizen is currently residing? Tr. 5:11-12, 6:1-4.[2]

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additional grounds for this Court to draw an inference that Respondents' actions indicate an effort to undermine Petitioner's ability to challenge his detention and manipulate federal jurisdiction in this case

[2] Citations are to the realtime unedited transcript provided immediately after the hearing The Court's questions are in some places paraphrased for brevity.

The Graham Declaration alleges that it is standard practice for an NTA to list a detention center address for a detained person. ECF 57-1 at ¶ 10 However, Mr Graham does not indicate whether it is standard practice for the NTA to list the address of a detention center at which the noncitizen is not yet detained, or whether NTAs can be and are revised as a person's address or location changes. Further, Petitioner notes that Mr Graham describes that the purpose of listing the detention center as the address of residence is to notify the immigration court – not the detainee or his counsel – of where immigration court proceedings should commence and where to send future legal notices and correspondence *Id*

As the Supreme Court explained, "a notice to appear serves as the basis for commencing a grave legal proceeding" whose aim "is to supply an affected party with a single document highlighting certain salient features of the proceedings against him." *Niz-Chavez v Garland*, 593 U.S. 155, 163-64 (2021) The Immigration and Nationality Act (INA) requires that, for the NTA to be sufficient, it must include the noncitizen's most recent address. *See* 8 U S C §§ 1229(a)(1) 1229a(b)(5)(A)

Here, not only did the government issue Dr. Khan Suri a deficient NTA by failing to list his "most recent address," but they did so to ensure that his case would be assigned to an immigration court in the geographic area of its choosing, since one's place of detention generally determines which immigration court will have jurisdiction over one's case. *See* Immigration Court Practice Manual, 4 2 (a) ("EOIR maintains an administrative control court list as a guide for where DHS may file charging documents and which immigration courts generally have jurisdiction over particular DHS offices or detention locations"); 8 C.F R. § 1003.11 (explaining administrative control Immigration Court operates within an assigned geographic area), *see also* Immigration

Court List – Administrative Control, https://www.justice.gov/eoir/immigration-court-administrative-control-list (last visited May 3, 2025)

Respondents' arguments relied heavily on the fact that Dr. Khan Suri's counsel had access to the NTA prior to filing the habeas petition to justify why he should have filed this petition in Texas. But what the government failed to mention was that Dr. Khan Suri's counsel only had access to that NTA because he had filed his own notice of appearance (Form EOIR-28) with the immigration court, thereby alerting ICE that Dr. Khan Suri was represented by counsel. ECF 21-1 at ¶ 7. Although ICE's policy required them to provide notification to Mr. Hassan of any transfer of his client once it became aware that Dr. Khan Suri was represented, it failed to do so then or at any future time. *See* ICE Policy 11022.1, 5.3 *Notifications in the Event of a Detainee Transfer*. ***Question: What records reflect that a custody determination was made prior to Dr. Suri's arrest that he would be detained in Texas? Tr. 7:4-10; When was the custody determination made? Tr. 7:9-14.***

Respondents' filing fails to adequately answer these questions, as the various declarations Respondents have provided and the arguments they have made are confusing and internally inconsistent. And importantly, Respondents' submission only deepens the appearance of a pre-arranged plan to arrest Dr. Khan Suri the night before the "regularly scheduled charter flight" to Louisiana, ECF 57-1 at ¶ 14, and swiftly transport him across Virginia to be placed on that flight and removed from this district as quickly as possible and without further communication to his wife or counsel.

Counsel for Respondents argued at the May 1st hearing that a custody determination, including where Dr. Khan Suri would be detained, was made before the NTA was issued. Tr. 7:3-8. *See also* Tr. 7:17-20 (the custody determination "must have been made prior to the NTA being

issued because otherwise there would be no other reason for the NTA to list the facility – the current address as the facility address "), ECF 57-1 at ¶ 11 ("Suri was issued his NTA after the detention facility was decided ")

The Graham Declaration indicates that the custody determination was made after Dr Khan Suri's arrest, during the intake process at Chantilly. *Id* at ¶ 6 (Dr Khan Suri was transported to the ERO office in Chantilly, Virginia after arrest "for the purpose of initial processing, including making a decision on detention location."); *see also Id.* at ¶ 2 (noting that decisions made during intake process include custody determinations and detention decisions) The Chantilly field office is approximately 30 minutes' drive from Dr. Khan Suri's home in Rosslyn, Virginia, where he was arrested around 9:30 PM He therefore could not possibly have arrived at the Chantilly field office more than a few minutes before 10 00 PM, but it seems more likely he would have arrived after 10·00 PM. Thus, Mr Graham's statement that "the decision to detain Suri at the Prairieland Detention Facility was made at approximately 10:00 p.m. on March 17, 2025", *Id* at ¶ 9, seems implausible, unless of course it had already been decided prior to Dr. Khan Suri's arrest that he was to be shipped off as quickly as possible to Prairieland

And indeed, the contradiction between Mr Graham's declaration and what is in the NTA suggests such a pre-arranged plan Dr Khan Suri's NTA, which included the place of detention in Texas, was digitally signed by Christopher R Heck at 9·47 PM on March 17, 2025 ("2025 03 17 21·47·14-0400"[3]). If the detention decision was not made until Dr Khan Suri was brought to the Chantilly Field Office and processed, as Mr Graham states in his declaration, that necessarily happened after 10 00 PM However, Respondents at oral argument also maintained that the

[3] The "-0400" in this time stamp indicates the time noted is four hours behind Greenwich Mean Time, or in other words, Eastern Daylight Time, which began on March 9, 2025

decision was made before the NTA was completed and issued But the NTA was signed at 9 47 PM, approximately seventeen minutes after Dr Khan Suri's arrest in Rosslyn, and almost certainly before Dr Khan Suri arrived at the Field Office Therefore, the sequence of events proposed by Mr Graham is simply not plausible, and raises more questions than it answers

Further, the Graham Declaration fails to fully respond to the Court's questions It fails to provide any further details around the custody determination that, according to Mr Simon's original declaration, was made on March 15, 2025, when the Rubio Determination was issued ECF 26-1 at ¶ 6. It does not describe what records reflect this decision-making process, other than the NTA itself, nor do Respondents provide any such records. Mr. Graham does not indicate who made the custody decision It does not indicate when the initial decision to detain Dr Khan Suri outside this district was made, but only alleges that the decision to detain him at Prairieland specifically, was made at 10 00 PM on March 17th. ECF 57-1 at ¶ 9.

Question: How many people were removed from Farmville at the time Dr. Khan Suri was removed? Tr. 13:3-6; How many beds were available in the Farmville Detention Center when Dr. Khan Suri was arrested? Tr. 13:18-22.

Respondents concede that some beds were available at Farmville at the time of Dr Khan Suri's arrest However, they maintain that "many of those beds were already reserved for other arrests " ECF 57-1 at ¶ 9 Mr Graham does not explain what arrests, when those arrests were to be carried out, and why those beds were able to be reserved *in advance* for "other arrests" but not used for Dr Khan Suri who was at that moment in custody

The Graham Declaration provides little clarity about how other detainees were treated in comparison to Dr Khan Suri Mr Graham states that there were 44 people from Farmville on the flight to Louisiana with Dr Khan Suri, ECF 57-1 at ¶ 14, but he does not specify how long these

44 other people had been at Farmville, whether they were being transported to other facilities in order to be removed from the U S , or if they were being transferred while their immigration cases were pending Nor does Mr Graham specify if anyone else on that flight had been arrested and detained the night before, and transferred as rapidly as Dr Khan Suri

Finally, Mr Graham's declaration does not address the apparent inconsistency between the numbers he provides that would indicate that Farmville was over capacity, and Mr Simon's previous statement that Dr Khan Suri was sent to Texas because of "*potential* overcrowding in Virginia facilities " ECF 26-1 at ¶ 8 (emphasis added). Mr. Simon nowhere asserted that either Farmville or Caroline was *actually* overcrowded at the time of Dr. Khan Suri's arrest. Thus, the information provided by Respondents remains vague and in conflict, and therefore should be viewed with skepticism, especially in light of the evidence provided by Petitioner

Questions: How are people typically moved from Farmville? When they are moved, is it typically in the middle of the night? Are they typically moved to multiple locations for a couple of hours, and then put on a plane? Tr. 14:1-5

Respondents do not adequately respond to this question. Mr. Graham states only that "it is common for arrestees to be transported shortly after being arrested to facilities around the country ECF 57-1 at ¶ 9. This does not provide any information as to whether detainees are regularly moved to multiple locations over the span of a few hours, in the middle of the night, before being moved across multiple states, and without being given the opportunity to notify family or counsel Nor does it explain how ICE, operating at such strained capacity, was able to immediately get a spot for Dr Khan Suri on a plane to Louisiana leaving 16 hours after his arrest, but was not able to find room for him at Farmville or Caroline

Question: Provide additional information on the decision to move Dr. Khan Suri to Texas and whether or not it was ordinary, including why he went from a facility that had bed space to a facility that did not? Tr. 15:4-8

Mr. Graham states that "Prairieland Detention Facility had bed space available" for Dr Khan Suri at the time of his arrest ECF 57-1 at ¶ 9 Mr. Graham also asserts that the "[t]emporary use of plastic cots during transitional periods is an expected part of facility practice and does not indicate the facility lacked bedspace for Suri." *Id.* But Mr. Graham provides no further explanation for this practice, including why it is "expected," why it is utilized if there is adequate bedspace why this practice could not be utilized at Farmville to accommodate the existing bed reservations and why Dr Khan Suri's "transition period" lasted nearly two weeks Nor does Mr Graham address Dr. Khan Suri's statement that there have been more than 50 people housed in his dorm that has a capacity of 36, such that there are "always about 15 or more people sleeping on the floors because there aren't enough beds " ECF 47-1 at ¶ 22. Mr. Graham's declaration makes no reference to any policies governing how ICE determines whether and where bed space is available, or any specific actions that were taken to determine whether Prairieland had bedspace available

In sum, Respondents have failed to assuage concerns that the government's conduct was designed to thwart Petitioner's access to counsel and the courts Instead, Mr. Graham's declaration supports Dr Khan Suri's claim that he was intentionally arrested on a Monday night because ICE had already planned, prior to his arrest, to have him on the Tuesday afternoon flight to Louisiana This is all too similar to the facts surrounding the arrest of Mohsen Mahdawi on April 14, 2025 In that case, Mr Mahdawi was arrested and detained at his naturalization interview, after which ICE attempted to put Mr Mahdawi on a plane to Louisiana almost immediately —within only a couple of hours of his arrest *See* ECF 51-1 at 6 Mr. Mahdawi remained in the district only because

they arrived at the airport too late to board the flight *Id.* Dr Khan Suri's and Mr. Mahdawi's cases follow the troubling pattern of cases of individuals who have been designated by the Secretary of State as threats to U S foreign policy interests, including Mahmoud Khalil, and Rumeysa Ozturk in which ICE uses the same intentional and extraordinary strategy to arrest, detain, and rapidly transfer these individuals to Respondents' preferred forum

Drawing all inferences in favor of Petitioner, the Court should find that the unknown custodian rule applies in this case, that Dr. Suri's petition was properly filed in this district naming his ultimate custodian, and that the case should proceed in this district in order not to reward the government's conduct by transferring the case to its preferred forum Should any questions remain unanswered as to the factual basis for this Court's exercise of jurisdiction, Petitioner respectfully renews his request for limited discovery on those issues

Date. May 3, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Vishal Agraharkar, hereby certify that on this date, I uploaded a copy of Petitioner's Response to Respondents' Supplemental Filing and any attachments using the CM/ECF system which will cause notice to be served electronically to all parties

Date: May 3, 2025

Respectfully submitted,

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