No. 25-1560

United States Court of Appeals for the Fourth Circuit

BADAR KHAN SURI,

Petitioner-Appellee,

v.

DONALD J. TRUMP, ET AL.,

Respondents-Appellants.

On Appeal from the United States District Court
for the Eastern District of Virginia
Case No. 1:25-cv-00480-PTG-WBP
Before the Honorable Patricia Tolliver Giles

AMICUS BRIEF OF FREE SPEECH FOR PEOPLE IN SUPPORT OF PETITIONER-APPELLEE AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(a), amicus curiae states that it does not have a parent corporation and that it has no stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Regulations

Constitutional Provisions

INTEREST OF AMICUS CURIAE[1]

Free Speech For People ("FSFP") is a national, non-partisan, nonprofit public interest organization dedicated to protecting our country's core democratic principles and our Constitution. It is a leading force for defending our Constitution and fulfilling the promise of political equality for all. Since its founding in January 2010, FSFP has worked to protect the opportunity for equal and meaningful civic participation by championing freedom of speech for individuals, challenging big money in politics, confronting corruption in government, fighting for free and fair elections, and advancing a new jurisprudence grounded in the promises of political equality and democratic self-government. FSFP engages in legal advocacy, public education, and organizing in communities across the country. The organization has more than one million supporters nationwide.

[1] Pursuant to Federal Rule of Appellate Procedure 29(a), *amicus curiae* states that no counsel for a party authored the brief in whole or in part, and no counsel or a party made a monetary contribution intended to fund the preparation or submission of the brief. No person other than the *amicus curiae* or their counsel made a monetary contribution to its preparation or submission. This brief is filed with an accompanying motion for leave.

INTRODUCTION

The basic principle at the heart of the writ of habeas corpus—that any government of the people must curtail the government's authority to carry out arbitrary detentions—is more than 800 years old. Our Framers understood the writ to be a central component to the functioning of our democracy, one that serves as a necessary and important protection against government abuse. Trial courts have long played an invaluable role in the administration of the writ. Without access to the courts, that protection crumbles.

Now, in order to justify the continued unjust detention and abuse of process visited upon Dr. Badar Khan Suri because he exercised his First Amendment rights of free speech and association, the Government demands that this Court restrict federal district courts' jurisdiction over habeas corpus writs for immigration detainees. Resp't-Appellants' Br. 34-55, Dkt. No. 36. As Dr. Khan Suri ably lays out in his brief before this Court, the Immigration and Nationality Act may dictate the path that a post-removal order proceeding may take. However, they do not and cannot be read to foreclose federal district courts' subject-matter

jurisdiction over Dr. Khan Suri's petition for habeas corpus. Pet'r-Appellee's Br. 1-2, 10-11, 27-47, Dkt. No. 41.

Such a restriction would severely limit immigrants' access to relief from unjust detention, leave them vulnerable to extended periods of confinement, and curtail their access to their already-limited due process rights. It would empower the government to imprison immigrants without meaningful court oversight and enable the government to continue to punish immigrants for speech and associations protected by the First Amendment. This is precisely the type of government abuse against which the writ of habeas corpus was designed to protect.

The writ historically has played a critical role in protecting individual rights against tyrannical government rule. The Framers of the Constitution were well aware that governments would first restrict habeas against political opponents or vulnerable outsiders, and saw such restrictions as being antithetical to democratic rule. For this reason, the Constitution allows for the writ's restriction only in the narrowest of circumstances.

In this case and in similar cases, the writ is operating as intended: to enable applicants to vindicate their First Amendment rights and to restrain arbitrary government action. Depriving the federal district courts of jurisdiction will subject our most vulnerable residents to irreversible violations of their rights, foster an environment of self-censorship, and leave the country as a whole vulnerable to arbitrary and abusive government.

ARGUMENT

I. THE FRAMERS WROTE THE WRIT OF HABEAS CORPUS INTO THE CONSTITUTION TO PROTECT INDIVIDUAL RIGHTS AND OUR DEMOCRATIC SYSTEM AGAINST ARBITRARY ABUSES OF POWER.

The Founders and Framers viewed the writ of habeas corpus as an essential tool for protecting individuals from government action against their rights. It was so core to their values that they authorized its limitation only in the most serious of circumstances: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. art. 1, § 9, cl. 2.

This was no mere philosophical exercise. The Suspension Clause was written by men who directly experienced the tyranny of British

colonial rule, the suspension of habeas, and the dangers of a government authorized to detain persons without reason. This history is instructive to the current case, as "protection for the privilege of habeas corpus was one of the few safeguards of liberty specified in the Constitution that, at the outset, had no Bill of Rights. In the system conceived by the Framers the writ had a centrality that must inform proper interpretation of the Suspension Clause." *Boumediene v. Bush*, 553 U.S. 723, 739 (2008).

When the Framers were drafting the Constitution, the concept of a man's right against unjustified detention was already centuries old in England. *Rasul v. Bush*, 542 U.S. 466, 473-74 (2004) (noting that the writ was "an integral part of our common-law heritage" by the time of colonial independence (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 485 (1973)). History was replete with examples of the dangerous abuses of authority that occurred when kings grasped at opportunities to curtail this right. In 1215, when the unpopular King John refused to rule in accordance with the custom and law of the time, the rebel barons deemed protection for free men against illegal imprisonment important enough to include it in the Magna Carta. Paul M. Pruitt Jr., *King John,*

Magna Carta and the Origins of English Legal Rights, 76 Ala. Law. 116, 121 (2015). And though the Magna Carta provided this guarantee in principle, it was King James I and King Charles I's attempts in the 1600s to usurp parliamentary power and imprison political opponents without trial that inspired Parliament to reassert the principles found in Magna Carta by codifying a distinct process to effectuate habeas corpus as a statutory right. *Boumediene*, 553 U.S. at 740-742 ("[G]radually the writ of habeas corpus became the means by which the promise of Magna Carta was fulfilled.); Jack Landau, *Magna Carta Turns 800*, Or. St. B. Bull. June 2025, at 20; Neil Douglas McFeeley, *The Historical Development of Habeas Corpus*, 30 Sw. L.J. 585, 588-89 (1976); Alan Clarke, *Habeas Corpus: The Historical Debate*, 14 N.Y.L Sch. J. Hum. Rts. 375, 382-83 (1998). Habeas corpus eventually became one of the most important privileges associated with English liberties and an established part of English common law that was ultimately inherited by the American legal system. McFeeley, 30 Sw. L.J. at 590 ("From a cloudy past, the writ of habeas corpus finally emerged as a significant part of the English legal system . . .. which was the heritage of Englishmen and of the English colonies in the New World.").

It was well understood that the writ and courts capable of enforcing the writ were necessary for preserving the basic right of freedom from unjust or arbitrary imprisonment. The writ has two fundamental and equally important purposes: to preserve individual rights and to protect the people as a whole against arbitrary government. Blackstone underscored both points in his *Commentaries*, explaining first that this right was "of great importance to the public [to preserve] this personal liberty: for if once it were left in the power of any… to imprison arbitrarily … there would soon be an end of all other rights and immunities." 1 William Blackstone, *Commentaries* *136. He went on to emphasize that illegal imprisonment could empower government abuse:

> To bereave a man of life, or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious and act of despotism, as must at once convey the alarm of tyranny throughout the whole kingdom. But confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten; is a less public, a less striking, and therefore a more dangerous engine of arbitrary government.

Id.

Early Americans valued the writ because they were deprived its protections and experienced the consequences. As English subjects, the

American colonists had long claimed to possess "all the rights, liberties, and immunities of free and natural-born subjects, within the realm of England." Amanda L. Tyler, *Habeas Corpus and the American Revolution*, 103 Cal. L. Rev. 635, 645 (2015). However, the Crown denied colonists outside of England the privileges of the English Habeas Corpus Act. Colonial governors often exercised more expansive detention powers over the colonists than would be permitted within England—a major source of dissatisfaction for American colonists prior to the Revolutionary War. *Id.* at 647. In its 1774 plea to the people of Great Britain, the Continental Congress specifically cited exclusion from the Act as proof that England was, at least to the American colonists, an arbitrary and unjust government:

> [W]e cannot help deploring the unhappy condition to which it has reduced the many English settlers, who, encouraged by the Royal Proclamation, promising the enjoyment of all their rights, have purchased estates in that county.—They are now the subjects of an arbitrary government, deprived of trial by jury, and when imprisoned cannot claim the benefit of the habeas corpus Act, that great bulwark and palladium of English liberty.

1 *Journals of The Continental Congress* 1774-1789, at 82, 88.

In 1777, during the Revolutionary War, Parliament formally suspended habeas corpus for Americans. Tyler, 103 Cal. L. Rev. at 649-

660, 673-74. The British government imprisoned nearly three thousand Americans in England during the war indefinitely without trial. *Id.* at 675. In one of the most prominent cases, Henry Laurens of South Carolina, one of the presidents of the Continental Congress, was captured while on a diplomatic mission to the Netherlands and imprisoned in the Tower of London for fifteen months without free access to pen and ink, without protection of the writ, and without being brought to trial. *Id.* at 683-687.

These experiences shaped how the Framers approached the writ of habeas corpus, and the writ's relationship to the tyranny they experienced under British colonial rule. When habeas was available, it served as a powerful counterweight to arbitrary government abuse. When it was suspended—and when the British government strategically defined Americans as outsiders to whom habeas corpus did not apply—the British government abused detention to punish dissent.

When the Framers came together to draft the Constitution, "they had in mind the history of royal imprisonment of Great Britain and the legacy of executive imprisonment in the colonies." McFeeley, 30 Sw. L.J. at 594. They were well aware that "[c]olonial governors and councils

had attempted to enforce obedience by detaining persons without judicial proceedings, and . . . remembered the efficacy of the common law writ in resisting these illegal detentions." *Id.* at 594.

It is not surprising, then, that the Framers incorporated the habeas corpus clause into the Constitution "with little or no debate or dissent." *Id.* at 595. The only debate amongst the Framers and during state ratification debates was whether the government should hold *any* power to suspend the writ. 5 *Debates on the Adoption of the Federal Constitution in the Convention Held at Philadelphia in 1787* 484 (Jonathan Elliot ed., Philadelphia, J.B. Lippincott, 1845) (a compilation of James Madison's contemporaneous notes during the Constitutional Convention). Several Framers argued that the writ was so important as to be "inviolate," and ultimately the Framers would authorize its suspension only in limited circumstances. *Id.* (quoting John Rutledge); *Boumediene*, 553 U.S. at 743-744, quoting 3 *Debates in the Several State Conventions on the Adoption of the Federal Constitution* 460–464 (Jonathan Elliot ed., 2d ed., Philadelphia, J.B. Lippincott, 1859).

When the Founders and Framers did opine on habeas corpus both during the debates and after, it was to underscore the powerful role it

plays in defending the people against tyranny. In *Federalist No. 84*, Alexander Hamilton explained that, alongside the creation of *ex post facto* laws, "the practice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny." *The Federalist No. 84* (Alexander Hamilton). He underscored his point by quoting liberally from Blackstone's *Commentaries* and emphasizing the particular egregiousness of a system in which a prisoner can be "secretly hurr[ied] to jail, where his sufferings are unknown or forgotten"; such a system was, to both Blackstone and Hamilton, a "more dangerous engine of arbitrary government." *Id.* (quoting Blackstone, *Commentaries*). And Thomas Jefferson, in letters to James Madison backing the bill of rights, powerfully advocated for the writ to retain "eternal and unremitting force," and argued that suspension of habeas corpus should be rare, if not nearly impossible. Letter from Thomas Jefferson to James Madison (Dec. 20, 1787), Founders Online, Nat'l Archives, https://founders.archives.gov/documents/Jefferson/01-12-02-0454 (last visited Sept. 30, 2025). He noted that most habeas corpus suspensions in English history were an unnecessary abuse of power involving "real treasons wherein the parties might as well have been

charged at once, or sham-plots where it was shameful they ever should have been suspected." Letter from Thomas Jefferson to James Madison (July 31, 1788), Founders Online, Nat'l Archives, https://founders.archives.gov/documents/Jefferson/01-13-02-0335 (last visited Sept. 30, 2025).

II. HABEAS CORPUS IS A CRITICAL SAFEGUARD TO PROTECTING INDIVIDUALS FROM GOVERNMENT ABUSE.

A. Habeas corpus and due process are essential and protected rights for immigrants.

Immigrants and other non-citizens in the United States have long been entitled to habeas corpus and due process rights. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) ("There are literally millions of aliens within the jurisdiction of the United States. The Fifth Amendment, as well as the Fourteenth Amendment, protects every one of these persons from deprivation of life, liberty, or property without due process of law."); *Kwong Hai Chew v. Colding*, 344 U.S. 590, 597 n. 5 (1953), quoting *Bridges v. Wixon*, 326 U.S. 135, 161 (1945) (Murphy, J.,

concurring opinion) (noting that immigrants' rights include the First, Fifth, and Fourteenth Amendment and are "inalienable privileges to all 'persons' and guard against any encroachment on those rights by federal or state authority"); *Plyler v. Doe*, 457 U.S. 202, 211-12 (1982) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 639 (1886) (The Fourteenth Amendment's "provisions are universal in their application, to all persons within the territorial jurisdiction").

Immigrants are not excluded from the protection of the writ of habeas corpus, including in the context of immigration detention. Indeed, as recently as earlier this year, the Supreme Court reiterated that habeas corpus applies in immigration contexts. *Trump v. J. G. G.*, 604 U.S. 670, 673 (2025); *AARP v. Trump*, 145 S. Ct. 1364, 1367-68 (2025). The jurisdiction of any federal court to hear such cases comes from 28 U.S.C. § 2241(c)(3), which authorizes any person to claim in federal court that they are being detained in violation of the Constitution or laws of the United States. *Zadvydas*, 533 U.S. at 687. Indeed, most pivotal immigration cases have arisen from petitioners filing writs of habeas corpus, underscoring the vital role of habeas in immigration contexts. *See, e.g., Dep't of Homeland Sec. v.*

Thuraissigiam, 591 U.S. 103, 107 (2020); *Khalil v. Joyce,* 780 F. Supp. 3d 476, 487 (D.N.J. 2025), *motion to certify appeal denied*, No. 25-CV-01963 (MEF)(MAH), 2025 WL 1262349 (D.N.J. May 1, 2025); *Ozturk v. Hyde*, 136 F.4th 382, 387–88 (2d Cir. 2025); *Mahdawi v. Trump*, 136 F.4th 443, 446–47 (2d Cir. 2025); *Kwong Hai Chew,* 344 U.S. at 595; *Bridges,* 326 U.S. at 140; *Zadvydas*, 533 U.S. at 684–85; *AARP,* 145 S. Ct. at 1368; *see also Trump v. J.G.G.*, 604 U.S. at 672 (holding specifically that challenges to removal under the Alien Enemies Act must be brought in habeas). Though the specific "process" afforded to meet the constitutional requirement for due process in immigration contexts is permitted to differ from the standards of due process afforded to citizens, *Mathews*, 426 U.S. at 79-80 ("In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens."), this has never been allowed to entirely eclipse the immigrant's right to habeas review, particularly where pre-hearing detention is at stake. Indeed, the Supreme Court has cautioned that the need for robust habeas protection is higher when detention is through executive action, before hearing, review, or trial:

> Where a person is detained by executive order, rather than, say, after being tried and convicted in a court, the need for collateral review is most pressing. … In this context the need for habeas corpus is more urgent. The intended duration of the detention and the reasons for it bear upon the precise scope of the inquiry. … The habeas court must have sufficient authority to conduct a meaningful review of both the cause for detention and the Executive's power to detain.

Boumediene, 553 U.S. at 783.

B. Habeas corpus is also an essential backstop for protecting individual liberties, including First Amendment rights.

First Amendment freedoms are "delicate and vulnerable, as well as supremely precious in our society." *NAACP v. Button*, 371 U.S. 415, 433 (1963). Immigrants and non-citizens in the country share in these First Amendment rights, *see Kwong Hai Chew,* 344 U.S. at 598, but these rights have no substance if the government is allowed to abusively and arbitrarily detain and imprison people for exercising these rights of speech and association. *See* Blackstone, *Commentaries* *136 (stating the power to imprison arbitrarily brings "an end of all other rights and immunities").

For example, in *Bridges*, the Supreme Court addressed the immigration habeas petition of an immigrant and union advocate for alleged affiliation with the Communist party. 326 U.S. at 137–38. In

that case, though the majority opinion did not address constitutional issues, Justice Murphy's concurring opinion pointed out that the threat of immigration consequences would eviscerate any façade of rights an immigrant might expect: "The alien would be fully clothed with his constitutional rights when defending himself in a court of law, but he would be stripped of those rights when deportation officials encircle him. I cannot agree that the framers of the Constitution meant to make such an empty mockery of human freedom." *Id.* at 162.

Immigrants are uniquely vulnerable to arbitrary detention because of the power the executive branch has over immigration determinations. In that environment, habeas corpus is essential to protecting their free speech rights in two practical ways. First, once detained, an individual's freedom of speech—their ability to share their views with the world or advocate for causes they believe in—is immediately curtailed for the duration of their detention. *See Khalil,* 780 F. Supp. 3d at 517 ("[Petitioner's] free speech rights are being violated, now."). The harm is irreparable; even if the imprisoned speaker is freed, they can never regain the lost opportunities to speak that they otherwise could have engaged in but for their detention. *Elrod*

v. Burns, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); *see Ozturk*, 136 F.4th at 401 ("To require [Ozturk] to sit on her challenge until she receives a final order of removal would [make her detention claim] "effectively unreviewable" because, "[b]y the time a final order of removal [is] eventually entered, the allegedly excessive detention would have already taken place." (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018)). Therefore, in free speech challenges to detention, such as this, the opportunity to raise habeas corpus as quickly as possible is even more essential. *Khalil*, 780 F. Supp. 3d at 517 ("[T]he Supreme Court has held over and over again, in numerous contexts, that meaningful review of First Amendment claims generally means rapid, prioritized review.").

Second, without the protection of the writ, speakers will self-censor knowing that in the absence of court intervention, their speech or their association might result in indeterminate imprisonment. *Button*, 371 U.S. at 433 ("The threat of sanctions may deter [the] exercise [of First Amendment rights] almost as potently as the actual application of sanctions."); *see, e.g.*, Notice of Mot. and Mot. for Prelim.

Inj. and Prelim. Factual Findings and Legal Conclusions at 11-12, 15-17, *The Stanford Daily Publishing Corp. v. Rubio*, No. 25-cv-6618-NW (N.D. Cal. filed Aug. 29, 2025), Dkt. No. 32-1 (lawsuit asserting that Stanford students and newspaper are self-censoring due to the Trump Administration's deportation and detention policies); Marc Lynch & Shibley Telhami, *Academic Self-Censorship Under Trump: The Latest Middle East Scholar Barometer Findings*, Univ. Maryland Critical Issues Poll (2025), https://criticalissues.umd.edu/feature/academic-self-censorship-under-trump-latest-middle-east-scholar-barometer-findings; *see also Benham v. City of Charlotte*, 635 F.3d 129, 135 (4th Cir. 2011) (discussing self-censorship as a "cognizable injury under the First Amendment"); *Porter v. Martinez*, 68 F.4th 429, 437 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 1007 (2024) (recognizing self-censorship as a constitutionally sufficient injury if based on actual and well-founded fear) (quoting *Libertarian Party of L.A. v. Bowen*, 709 F.3d 867, 870 (9th Cir. 2013) (alteration in original)); *Brown v. Kemp*, 86 F.4th 745, 761 (7th Cir. 2023) (quoting *Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 393 (1988) (permitting standing based on current injury if

self-censorship is based on actual and well-founded fear of legal action). This too, would cripple the promise of our First Amendment.

C. Our immigration court system fails to provide sufficient safeguards against arbitrary detention.

Though the Supreme Court has recognized that immigrants have many of the same inalienable rights as citizens, our immigration courts fall woefully short of providing sufficient due process to immigrants, particularly with regard to claims arising from arbitrary detention or abusive conditions of confinement. *See* Anthony R. Enriquez, *Structural Due Process in Immigration Detention*, 21 CUNY L. Rev. 35, 43-48 (2015) (discussing hearing procedures). Despite ongoing calls for reform, successive administrations and congresses have repeatedly failed to improve the system's efficiency and process. Kathleen Bush-Joseph, *Executive Actions Cannot Fix the Nation's Broken Immigration System–Congress Needs to Legislate*, U. Pa. Perry World House (June 11, 2025), https://perryworldhouse.upenn.edu/news-and-insight/executive-actions-cannot-fix-the-nations-broken-immigration-system-congress-needs-to-legislate; Theresa Cardinal Brown & Emerson Sprick, *Has Congress Given Up on Bipartisan Immigration Reform? A Data-Driven Look at Legislation Since 2015*, Bipartisan Policy Center (May 21, 2025),

https://bipartisanpolicy.org/report/has-congress-given-up-on-bipartisan-immigration-reform-a-data-driven-look-at-legislation-since-2015 ("These [immigration reform] efforts have largely been unsuccessful.").

The instant case exemplifies how the immigration courts failed to prevent the arbitrary detention of an immigrant for his exercise of free speech and association rights. Dr. Badar Khan Suri was stripped of his visa, kidnapped by masked ICE officials, transported to various undisclosed locations, and ultimately imprisoned hundreds of miles from his home because the government dislikes his speech, his wife's speech, and his association with his father-in-law. Order, *Suri v. Trump*, No. 1:25-cv-480 (E.D. Va. filed May 14, 2025), Dkt. No. 65 [hereinafter *Suri* May 14, 2025 Order]; Mem. Op. at 3-4, *Suri v. Trump*, No. 1:25-cv-480 (E.D. Va. filed May 6, 2025), Dkt. No. 59 [hereinafter, *Suri* May 6, 2025 Opinion]. Immigration officials subjected him to unhygienic, inhumane detention conditions, and his requests for religious accommodation were denied for days. Kimmy Yam & Gary Grumbach, *Georgetown Scholar Released from ICE Detention says they Treated him like a "Subhuman,"* NBC News (May 14, 2025), https://www.nbcnews.com/news/asian-america/georgetown-scholar-

badar-khan-suri-released-months-ice-detention-rcna204184; Press Release, Don Beyer, U.S. Representative (VA-8), Beyer Urges ICE to Improve Treatment of Detained Scholar Badar Khan Suri, (May 5, 2025), https://beyer.house.gov/news/documentsingle.aspx?DocumentID=6494. He was imprisoned for 58 days and released only because he filed a writ of habeas corpus and sought the intervention of a federal court. *See Suri* May 14, 2025 Order. The Government now argues that they should be given the authority to detain him indefinitely with no recourse to habeas prior to resolution of his immigration court removal proceedings.

Dr. Khan Suri's case is no outlier. Many of the high-profile detainees of this Administration are individuals who exercised their First Amendment rights of speech and association, and the Administration wants to keep them in prison while it hunts for pretenses to turn those acts of speech and association into offenses warranting and removal.[2]

[2] This includes the publicly reported cases involving Mahmoud Khalil, Mohsen Mahdawi, Rümeysa Öztürk, Yunseo Chung, and Leqaa Kordia.

Many detainees are now denied even the barebones due process of usual immigration court proceedings. The Administration is attempting to bypass immigration judges and courts by expanding the application of expedited removal to more people and by pushing more stipulated removals to coerce immigrants into waiving their rights to a court hearing. Exec. Order 14159, *Protecting the American People Against Invasion*, 90 Fed. Reg. 8443 (Jan. 29, 2025); *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025); Jennifer Lee Koh, Jayashri Srikantiah & Karen Tumlin, *Deportation Without Due Process*, Nat'l Immigr. L. Ctr. (Sept. 2011), https://www.nilc.org/wp-content/uploads/2016/02/Deportation-Without-Due-Process-2011-09.pdf.[3] President Trump has also fired current experienced immigration judges and replaced them with inexperienced, unqualified attorneys to do his bidding with the power of immigration judges. Adriel Orozco, *Trump Administration Appoints Hundreds of Unqualified Military Lawyers*, Am. Immigr. Council (Sept. 5, 2025),

[3] Appeals have temporarily placed expedited removal changes on hold. Josh Gerstein, *Federal Judge Blocks Trump Effort to Expand Fast-track Deportations*, Politico (Aug. 29, 2025), https://www.politico.com/news/2025/08/29/trump-deportation-expedited-judge-00538077.

https://www.americanimmigrationcouncil.org/blog/trump-appoints-military-lawyers-to-serve-as-immigration-judges; Konstantin Toropin, *Pentagon Authorizes up to 600 military lawyers to serve as temporary immigration judges*, AP News (Sep. 2, 2025), https://apnews.com/article/pentagon-immigration-judges-trump-pete-hegseth-b07950833591270b926ad86ede8b961f; Rebecca Santana, *17 Immigration Court Judges have been Fired by the Trump Administration*, PBS News (Jul. 16, 2025), https://www.pbs.org/newshour/politics/17-immigration-court-judges-have-been-fired-by-the-trump-administration-across-10-states-union-says; Hilda Gutierrez, Michael Bott, & Scott Walker, *Nearly a Quarter of SF's Immigration Judges have been Fired by Trump Administration*, NBC (Aug. 25, 2025), https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-fired/3938453.

The Trump Administration is also rapidly forcing increasing numbers of people into immigration detention. Brittany Gibson & Russell Contreras, *Immigrant detentions soar 50% to a record under Trump*, Axios (Aug. 23, 2025), https://www.axios.com/2025/08/23/immigrant-detentions-record-trump-deportations. Bond hearings,

already imperfect vehicles for ensuring just detention, have been reduced or revoked entirely, giving many immigrants no recourse to challenge their detention other than federal district court. Maria Sacchetti & Carol D. Leonnig, *ICE Declares Millions of Undocumented Immigrants Ineligible for Bond Hearings*, Wash. Post (Jul. 15, 2025), https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings. This leads to indefinite pre-hearing detention for many immigrants, for months and sometimes years. *Id.* Immigrants can sometimes be released on parole, but only at the discretion of an immigration officer, not through judicial process. *Humanitarian or Significant Public Benefit Parole for Aliens Outside the United States*, USCIS (last reviewed Jan. 24, 2025), https://www.uscis.gov/humanitarian/humanitarian_parole. Advocates for such measures openly state that they seek detention to discourage immigrants from filing "frivolous" claims in hopes of being released. Sacchetti, *supra* (quoting one such advocate saying, "Detention is absolutely the best way to approach this, if you can do it. It costs a lot of money, obviously. … You're pretty much guaranteed to be able to remove the person, if there's a negative finding, if he's in detention.").

This strategy is working; the threat of indefinite detention is coercing detainees into abandoning their cases or self-deporting. *See, e.g.,* Uriel J. Garcia, *A Houston mother held by ICE must choose: indefinite detention or be deported without her family,* Texas Tribune (Sept. 8, 2025), https://www.texastribune.org/2025/09/08/texas-houston-immigrants-family-deportation-belize-ice; Luis Ferré-Sadurní and Hamed Aleaziz, *How a Columbia Student Fled to Canada After ICE Came Looking for Her*, N.Y. Times (Mar. 15, 2025), https://www.nytimes.com/2025/03/15/nyregion/columbia-student-kristi-noem-video.html.

People subject to immigration imprisonment do not just face indefinite detention prior to insufficient legal proceedings; they are also subject to inhumane conditions of confinement. *See* Edward J. Markey, Jim McGovern, & Ayanna Pressley, *We Visited Rumeysa Ozturk in Detention.*, N.Y. Times (Apr. 25, 2025), https://www.nytimes.com/2025/04/25/opinion/trump-rumeysa-ozturk-ice.html ("Inside the detention center, [Rumeysa Ozturk] was inadequately fed, kept in facilities with extremely cold temperatures and denied personal necessities and religious accommodations. She suffered asthma attacks

for which she lacked her prescribed medication."); Akash Pillai, Drishti Pillai, and Samantha Artiga, *Health Issues for Immigrants in Detention Centers*, KFF (Sept. 30, 2025), https://www.kff.org/racial-equity-and-health-policy/health-issues-for-immigrants-in-detention-centers. Immigrants also are being detained in far flung, sometimes dangerous locations, far from legal assistance and their communities. Eric Levenson & Gloria Pazmino, *Why ICE is Really Moving Detainees Over a Thousand Miles*, CNN (Apr. 10, 2025), https://www.cnn.com/2025/04/10/us/immigration-detainees-trump-ice-students-visa. They are being moved intentionally and quickly through multiple locations to detention centers in a bid to separate immigrants from their communities and to forum shop—to ensure the detainees' cases are heard by courts more likely to side with the Administration. *See, e.g.*, *Suri* May 6, 2025 Opinion at 28; Mem. and Order at 11, 19-23, *Ozturk v. Trump*, No. 25-cv-10695 (D. Mass. Apr. 4, 2025), Dkt. No. 42 [hereinafter *Ozturk* Order]; *see also* Jaclyn Diaz & Adrian Florido, *Why is Trump Sending Immigrant University Scholars to Louisiana and*

Texas, NPR (Apr. 8, 2025), https://www.npr.org/2025/04/08/nx-s1-5351645/ice-detention-louisiana-university-scholars.[4]

In this overburdened system, the detainees suffer inevitable errors. Mistaken deportations and missing detainees are becoming more common as this Administration ramps up enforcement and puts additional pressure on an already burdened immigration detention system. *See, e.g.,* Ben Wider & Shirsho Dasgupta, *Hundreds of Alligator Alcatraz Detainees Drop off the Grid*, Miami Herald (Sept. 16, 2025), https://www.miamiherald.com/news/local/immigration/article312042943.html.

Dr. Khan Suri was thrust into this system because of his speech. He is not alone. The Trump Administration is targeting lawfully present individuals because of their speech, and abusing the power of his office and the laws of this country to do so. Secretary of State Marco Rubio is arbitrarily and baselessly determining that certain speech by disfavored non-citizen academics is part of "terrorist" activity or against

[4] Though the Government claims this is focused on the availability of beds in detention centers, courts, including the district court in this matter, have found such assertions not to be credible. *Ozturk* Order at 11; *Suri* May 6, 2025 Opinion at 26.

U.S. foreign policy interests and has used these determinations not only to justify removal proceedings but also to justify their indefinite detention until such proceedings are concluded. Resp't-Appellants' Br. 5, Dkt. No. 36; Resp't-Appellants' Opening Br. at 6-7, *Khalil v. U.S. President*, Nos. 25-2162, 25-2357 (3d. Cir. filed Aug. 20, 2025), Dkt. No. 46; Jake Offenhartz, *Pressed for Evidence Against Mahmoud Khalil, Government Cites its Power to Deport People for Beliefs*, AP News (Apr. 10, 2025), https://apnews.com/article/mahmoud-khalil-columbia-university-trump-c60738368171289ae43177660def8d34 (containing link to Secretary Rubio's determination regarding Khalil); Niha Masih, *Inside the little-used foreign policy provision cited for student deportations*, Wash. Post (Apr. 29, 2025), https://www.washingtonpost.com/immigration/2025/04/29/khalil-mahdawi-deportation-foreign-policy-rubio (noting these arbitrary determinations have been used in cases involving students Mahmoud Khalil, Yunseo Chung, Mohsen Mahdawi, and Rumeysa Ozturk). The State Department has also revoked more than 6,000 international student visas, 200-300 of which were for "terrorist activity," which is defined broadly as acts that endanger human life or violate U.S. law.

Ana Faguy, *US State Department Revokes 6,000 Student Visas*, BBC News (Aug. 18, 2025), https://www.bbc.com/news/articles/cz93vznxd07o. Secretary Rubio has insulated his immigration decisions from public scrutiny, issuing a determination that they are part of the foreign affairs function of the U.S. and therefore exempt from the notice and comment requirements of the Administrative Procedure Act. *Determination: Foreign Affairs Functions of the United States*, 90 Fed. Reg. 12200 (Mar. 14, 2025); *Rubio Issues Broad Declaration on Foreign Affairs Exception of the Administrative Procedure Act*, Econ. Pol'y Inst. (Mar. 19, 2025), https://www.epi.org/policywatch/rubio-issues-broad-declaration-on-foreign-affairs-exception-of-the-administrative-procedure-act (explaining that Rubio's claim closes off avenues for challenging the legality of new federal regulations).

Again, the punishment of a single person for their speech creates a cascading chilling effect on others and ultimately on our democratic society as a whole. *See Button,* 371 U.S. at 433. Because of the well-publicized detentions and deportations under the current administration, students and academics, both citizen and non-citizen, on targeted campuses have been questioning their everyday movements

and online interactions for fear of retribution against themselves and their families. Ray Sanchez, *"Rules aren't clear anymore," Trump Crackdown on Student Protesters,* CNN (Mar. 18, 2025), https://www.cnn.com/2025/03/16/us/mahmoud-khalil-columbia-protests-free-speech. The Trump Administration's actions have created a climate of fear, uncertainty, and self-censorship, the antithesis of the liberty that the First Amendment affords to all people in our country.

Dr. Khan Suri's detention highlights the enduring importance of habeas corpus, both as a tool to protect our fragile individual liberties and to curtail government abuses. With the power to subject targets to indefinite immigration detention, the government does not need to articulate a constitutional or lawful basis for removal. They merely need to detain their target—and place vindication, whether through removal hearing or a post-hearing appeal, out of reach of most detainees. Only when detention is subject to rapid court oversight, and when courts have authority to terminate unlawful or unconstitutional detention, can our country avoid tyranny, arbitrary government, and the collapse of our individual liberties.

III. FORECLOSING THE WRIT OF HABEAS CORPUS WILL EMPOWER A BROADER ATTACK ON FREE SPEECH AND DISSENT.

If deprived of jurisdiction over immigration-detention-related writs of habeas corpus, federal district courts will be unable to intervene in the abuse of immigration detention to strip non-citizens (or accused non-citizens) of their basic rights. The writ's dual purposes will be at risk: individual liberties will be vulnerable, and abusive, arbitrary government will be freed of a powerful restraint.

The Trump Administration has made it clear that its initial detentions were only the first phrase of a plan to target dissenting voices. When ICE agents arrested Mahmoud Khalil, President Trump posted: "This is the first arrest of many to come. We know there are more students at Columbia and other Universities across the Country who have engaged in pro-terrorist, anti-Semitic, anti-American activity, and the Trump Administration will not tolerate it. … We will find, apprehend, and deport these terrorist sympathizers from our country — never to return again." Donald J. Trump (@realDonaldTrump), Truth Social (May 10, 2025, 1:05 PM), https://truthsocial.com/@realDonaldTrump/posts/114139222625284782. President Trump also

has threatened to explore revoking the citizenship of New York City Mayoral Candidate Zohran Mamdani and businessman Elon Musk. Chris Cameron, *Trump Escalates Attacks on Mamdani*, N.Y. Times (July 1, 2025), https://www.nytimes.com/2025/07/01/us/politics/trump-zohran-mamdani.html; Bess Levin, *Trump Suggests He's Open to Deporting Musk*, Vanity Fair (July 1, 2025), https://www.vanityfair.com/news/story/trump-suggests-hes-open-to-deporting-musk-as-musk-threatens-some-kind-of-tbd-nuclear-option. His attack may not stop at non-citizens; President Trump has openly suggested deporting U.S. citizens to El Salvador's notorious torture facility, the Terrorism Confinement Center (CECOT). Brian Mann, *'Homegrowns are Next': Trump Hopes to Deport and Jail U.S. Citizens Abroad*, NPR (Apr. 16, 2025), https://www.npr.org/2025/04/16/nx-s1-5366178/trump-deport-jail-u-s-citizens-homegrowns-el-salvador.

The current administration has expressed its intentions to criminalize dissent using all the powers of the federal government that can be bent to the president's will. Zolan Kanno-Youngs, & Hamed Aleaziz, *Inside Trump's Crackdown on Dissent*, N.Y. Times (Mar. 12, 2025), https://www.nytimes.com/2025/03/12/us/politics/trump-

crackdown-dissent.html ("'Freedom of speech has limitations.' Thomas D. Homan, who is overseeing Trump's deportation operation, said…."). In carrying out their policies, Trump and senior officials in his administration have displayed either ignorance of, or disregard for, constitutionally protected rights, due process, and the writ of habeas corpus. *See, e.g.*, Scott Neuman, *DHS Secretary Misstates Meaning of Habeas Corpus under Senate Scrutiny*, NPR (May 20, 2025), https://www.npr.org/2025/05/20/nx-s1-5405144/habeas-corpus-noem-dhs-senate (Homeland Security Secretary Kristi Noem was unable to define "habeas corpus" during a congressional hearing.); Op. and Order at 2-3, *U.S. v. Adams*, 24-CR-556 (S.D.N.Y. filed Apr. 2, 2025), Dkt. No. 177 (describing the DOJ's asserted reasons for dismissal as "unsupported by any objective evidence," "pretextual," "smack[ed] of a bargain," "unprecedented," and "breathtaking"); Order at 2, *U.S. v. Dana*, No. 25-MJ-000152 (D.D.C. filed Sept. 4, 2025), Dkt. No. 16 (order questioning whether the DOJ is commencing prosecutions without the necessary belief that the person will, more likely than not, be found guilty beyond a reasonable doubt); Transcript of Jul. 24, 2025 Status Conference at 9-10, *U.S. v. Arevalo-Chavez*, No. 22-CR-429 (E.D.N.Y.

filed July 25, 2025), Dkt. No. 188 (judge requesting additional information and documentation from the DOJ to ensure that a criminal defendant is not deported to El Salvador during the case without appropriate procedure); Alan Feuer, *Judges Openly Doubt Government*, N.Y. Times (Aug. 4, 2025), https://www.nytimes.com/2025/08/04/us/politics/trump-justice-department-judges-courts.html.

If district courts are barred from hearing habeas petitions in immigration contexts, thousands of people may have no recourse at all for challenging their unjust pre-hearing detention, which may very well include citizens. *See, e.g.,* Conor Friedersdorf, *A U.S. Citizen Detained by ICE for Three Days Tells His Story*, Atlantic (Sept. 10, 2025), https://www.theatlantic.com/politics/archive/2025/09/george-retes-ice-detained-us-citizen/684152; Jaclyn Diaz & Juliana Kim, *DOJ announces plans to prioritize cases to revoke citizenship*, NPR (June 30, 2025), https://www.npr.org/2025/06/30/nx-s1-5445398/denaturalization-trump-immigration-enforcement. This is the type of governance that Hamilton and the Framers feared, and which the writ of habeas corpus wards against: the "confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten; is a less public, a less

striking, and therefore a more dangerous engine of arbitrary government." *Federalist No. 84* (quoting Blackstone, *Commentaries*).

The writ of habeas corpus is a sacred element of our democracy, enshrined in the Constitution by the Framers who understood its value and were all too familiar with the dangers posed by its suspension. These are dangers felt not just by the individual detainee, or by their silenced brethren, but by the whole country. So too here: the Government's attempt to strip habeas corpus jurisdiction from the federal district courts most immediately harms Dr. Khan Suri and other vulnerable immigrant populations, but the ultimate impact falls on the fragile liberties held by all those who reside in our country. As long as the principle of habeas corpus stands, it remains a beacon for the rule of law and a bulwark against the whims of any one administration or individual within the government.

CONCLUSION

For these reasons, this Court should affirm the district court's judgment.

Date: October 3, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 29(a)(5) because it contains **6,421** words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the typestyle requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook 14-point font.

/s/ Suparna Reddy
Suparna Reddy

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on October 3, 2025. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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