

No. 26-

IN THE
Supreme Court of the United States

MAHMOUD KHALIL,

Petitioner,

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

**PETITION FOR A WRIT OF CERTIORARI
AND APPENDIX — Volume I of II
(APPENDICES A-D)**

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QUESTIONS PRESENTED

The executive branch arrested, detained, and subjected Petitioner, a lawful permanent resident, to removal proceedings based on his constitutionally protected speech and for the purpose of broadly chilling speech the executive disfavors.

The questions presented are: (a) whether the Immigration and Nationality Act deprives federal courts of jurisdiction in habeas corpus to review the executive's actions to punish and retaliate against a noncitizen through detention and removal proceedings, in circumstances where the administrative petition-for-review process could not offer meaningful review of "now or never" claims brought under the First and Fifth Amendments, and if so (b) whether that deprivation of habeas jurisdiction violates the Constitution as applied to Petitioner.

PARTIES TO THE PROCEEDINGS

Petitioner (petitioner–appellee below) is Mahmoud Khalil.

Respondents (respondents–appellants below) are Donald J. Trump, in his official capacity as President of the United States; Kenneth Genalo, in his official capacity as Field Office Director of New York, Immigration and Customs Enforcement; Eric Rokosky, in his official capacity as Warden of Elizabeth Contract Detention Facility; David J. Venturella, in his official capacity as Acting Director of Immigration and Customs Enforcement; Markwayne Mullin, in his official capacity as Secretary of the Department of Homeland Security; Marco Rubio, in his official capacity as Secretary of State; and Todd Blanche, in his official capacity as Attorney General of the Department of Justice.

RELATED PROCEEDINGS

Khalil v. Joyce, No. 2:25-cv-01963, U.S. District Court for the District of New Jersey. Judgment pending.

Khalil v. President, Nos. 25-2162 & 25-2357, U.S. Court of Appeals for the Third Circuit. Judgment entered January 15, 2026.

Matter of M-K-, Board of Immigration Appeals. Judgment entered April 9, 2026.

Khalil v. Blanche, No. 26-60344, U.S. Court of Appeals for the Fifth Circuit. Case filed May 14, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Mahmoud Khalil respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The court of appeals opinion (App. 1a) is reported at 164 F.4th 259. The order of the court of appeals denying review en banc and a dissenting opinion (App. 404a) is reported at 176 F.4th 295. The opinion of the district court concluding that it has subject matter jurisdiction (App. 248a) is reported at 780 F. Supp. 3d 476. The opinion of the district court determining that Petitioner was likely to succeed on the merits of his motion for a preliminary injunction (App. 96a) is reported at 784 F. Supp. 3d 705. The opinion of the district court granting Petitioner a preliminary injunction against detention and removal (App. 78a) is reported at 786 F. Supp. 3d 871. The opinion of the district court denying Respondents' motion for a stay pending appellate review (App. 64a) is reported at 2025 WL 2092376.

JURISDICTION

The court of appeals issued its decision on January 15, 2026 (App. 1a). The court of appeals denied the petition for rehearing on May 22, 2026 (App. 404a). Justice Alito granted the first motion for extension of time to file a petition for a writ of certiorari on July 27, 2026, extending the deadline to September 21, 2026. Justice Alito granted a second motion for extension of time on September 17, 2026,

extending the deadline to October 19, 2026. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY & CONSTITUTIONAL PROVISIONS INVOLVED

In relevant part, the Immigration and Nationality Act, 8 U.S.C. §1252(b)(9), provides:

**(b) REQUIREMENTS FOR REVIEW OF ORDERS OF
REMOVAL**

With respect to review of an order of removal under subsection (a)(1), the following requirements apply:

...

**(9) CONSOLIDATION OF QUESTIONS FOR
JUDICIAL REVIEW**

Judicial 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 from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

* * *

Article I, Section 9, clause 2 of the U.S. Constitution, the Suspension Clause, provides:

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.

* * *

The First Amendment to the U.S. Constitution provides:

Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. . . .

* * *

The Fifth Amendment to the U.S. Constitution provides:

No person shall . . . be deprived of life, liberty, or property, without due process of law
. . . .

* * *

INTRODUCTION

Petitioner Mahmoud Khalil was arrested, detained, and subjected to removal proceedings through an unprecedented use of the executive branch's asserted immigration power, in order to silence him and broadly chill protected speech the executive disfavors. The question is whether he can challenge the legality of his detention and efforts to deport him in habeas corpus where no adequate substitute to remedy the distinct First and Fifth Amendment harms that the government imposed is otherwise available.

As a Columbia University graduate student, Petitioner, a lawful permanent resident, spoke out in favor of Palestinian human rights. In March 2025, explicitly because the government sought to punish him for expressing a message it disfavors and to send a chilling message to others, the government detained and sought to deport Petitioner, while broadly publicizing its retaliatory actions as a retributive signal to like-minded advocates. Petitioner spent over three months in detention more than 1300 miles away from his home and his pregnant wife, during which time his first son was born, until the district court, sitting in habeas, released him on bail.

Were it not for the district court's intervention—enabled by subject matter jurisdiction that the decision below rejects—he would likely still, eighteen months later, be behind bars, unable to obtain release until the ultimate conclusion of an inadequate process involving administrative removal proceedings, federal appellate review via a petition for review (“PFR”), and

possible remands. During this process, the First Amendment injuries from retaliation and chilled speech, and the Fifth Amendment injuries from punitive detention, could not be remediated by any court.

After the court below held that federal district courts have no subject matter jurisdiction in habeas corpus to hear a noncitizen’s First and Fifth Amendment challenges to retaliatory and punitive executive immigration detention intended to chill protected speech, the Fourth Circuit rejected its conclusions, creating a clear circuit split. *Suri v. Trump*, 184 F.4th 260 (4th Cir. 2026), *petition for cert. filed sub nom. Trump v. Suri*, No. 26-380 (U.S. Sept. 21, 2026). The government has sought certiorari in *Suri* and agrees that this Court should also take up Mr. Khalil’s case, because “[g]ranting both petitions would guard against the possibility that either case might become moot” and ensure this Court’s review. Petition for a Writ of Certiorari at 5, *Trump v. Suri*, No. 26-380 (U.S. Sept. 21, 2026) (“*Suri* Pet.”).

The primary provision of the Immigration and Nationality Act (“INA”) at issue, 8 U.S.C. §1252(b)(9), channels most challenges to the validity of a final order of removal through the administrative process and PFRs of a final removal order to the court of appeals.¹ But it does not, and could not, consistent with the U.S. Constitution, strip habeas courts of

¹ The court below did not address whether other provisions of §1252 divest district courts of jurisdiction over these claims, but for the reasons explained by the Fourth Circuit in *Suri* and the district court below, they do not. See *Suri*, 184 F.4th at 285-89, 297-98; App. 391a-98a.

jurisdiction over constitutional challenges to executive detention that is retaliatory in violation of the First Amendment and punitive in violation of the Fifth Amendment. Challenges to detention do not fall within the reach of (b)(9), as made clear in *Department of Homeland Security v. Regents of the University of California*, 591 U.S. 1, 19 (2020); *see also Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018) (plurality op.) (explaining that (b)(9) does not channel claims that cannot receive a “meaningful chance for judicial review” through the administrative and PFR processes). And PFR courts do not review the validity of ongoing detention and can provide no remedy—direct or indirect—to such unlawful detention that “would have already taken place.” *Jennings*, 583 U.S. at 293. That makes Petitioner’s detention claims “effectively unreviewable,” *id.*, meaning they fall outside of (b)(9).

Ensuring the availability of habeas review is compelled by the text of (b)(9). But even if (b)(9) were ambiguous, the interpretation of the court below would have to be rejected based on the serious constitutional concerns it raises under the Suspension Clause as well as under the First and Fifth Amendments—a concern the court below barely addressed. The administrative and PFR processes—which do not address and cannot remedy unconstitutional detention—are far from the kind of adequate and effective substitutes for the Great Writ that this Court has required. Further, the First Amendment and this Court’s precedents regarding the urgency of censorship harms do not permit Congress to strip habeas courts of jurisdiction to remedy illegal detention explicitly intended to silence

speech, especially for a period of months or years while the administrative process unfolds. The Fifth Amendment similarly requires review of Petitioner's claim that his detention is punitive and unrelated to the government's interests in preventing flight risk or danger—a claim which also cannot be addressed, let alone remedied, by the PFR process.

Constitutional concerns also demonstrate why Petitioner's challenges to the efforts to deport him—avowedly based on his protected speech and for the purpose of securing his detention—cannot receive meaningful review through the PFR process. To require the channeling of such First Amendment claims before any habeas review would similarly allow the government to accomplish its intended censorship and speech-chilling harms during the pendency of that administrative process.

The questions presented are extraordinarily important, not only to Petitioner and multiple other noncitizens the government has detained and pursued for removal based on their speech over the past 18 months, but to the values of the Nation, the meaning of the Great Writ, and the continued vitality of the First Amendment to protect against government silencing of speech it disfavors.

Respectfully, the Court should grant the Petition and address this case at the same time it considers *Suri*. It would also be appropriate for the Court to hold this Petition (and the petition in *Suri*, ensuring that the important issues in these cases be heard together) until the resolution of Mr. Khalil's pending PFR before the Fifth Circuit, given that neither Mr. Khalil nor the

petitioner in *Suri* is presently detained. A central and explicit assumption undergirding the Third Circuit’s decision (and the dissent in *Suri*) is that a petitioner would receive meaningful review and necessary factual development for his constitutional claims through the PFR process, including via a transfer to a district court pursuant to the Hobbs Act, 28 U.S.C. §2347(b)(3). But the Fifth Circuit recently denied Mr. Khalil’s Hobbs motion, albeit without explanation, *Khalil v. Blanche*, No. 26-60344 (5th Cir. Sep. 9, 2026), ECF No. 150-1 (order denying transfer of petition), and briefing on his PFR will be complete by early November. Because the outcome of the Fifth Circuit proceedings will have significant implications for the important jurisdictional questions presented here and in *Suri*, a hold is also appropriate for ultimate consideration of this case along with *Suri*.

STATEMENT OF THE CASE

A. Petitioner’s Speech and Government Retaliation.

Mr. Khalil was born in a Palestinian refugee camp. JA1100 ¶5.² He came to the United States in 2022 on a student visa for a master’s program at the School of International and Public Affairs at Columbia University. JA1033 ¶20; JA1100 ¶5. In 2023, he married a U.S. citizen, and in 2024 he became a lawful permanent resident (“LPR”). JA1033 ¶21; JA459 ¶5.

Mr. Khalil has been a lifelong advocate for Palestinian human rights. JA1033-34 ¶¶22-25; JA459

² “JA” citations are to the joint appendix in the court of appeals below.

¶6. At Columbia, he took a more public role in pro-Palestinian advocacy, including through peaceful protests, speaking at teach-ins, engaging with media, and (in April 2024) serving as a mediator and negotiator between student groups and the Columbia administration. JA1033-34 ¶¶22, 24-26. In advocating for the rights of Palestinians, Mr. Khalil also condemned anti-Semitism, emphasizing that Jewish students are “an integral part” of the diverse movement for Palestine, and that “the liberation of . . . Palestinians and the Jewish people are intertwined,” and that “[a]nti-Semitism, and any form of racism, has no place on campus and in this movement.” JA431, JA657, JA1034, JA1128, JA1133, JA1634.

In March 2025, the government arrested, detained, and attempted to deport him avowedly because of his speech and pursuant to a policy of targeting noncitizens for removal based on constitutionally protected speech advocating for Palestinian rights. JA1045-50 ¶¶73-81, 83, 88-89. On March 8, plainclothes federal officers entered the vestibule of Mr. Khalil’s private residence in New York City without a warrant and arrested him in front of his eight-months-pregnant wife. JA1039-42 ¶¶45-53, 57. In the middle of the night, Department of Homeland Security (“DHS”) agents whisked him first to New Jersey and then, the next morning, to a remote detention facility in Louisiana. JA1043-45 ¶¶61-70. For 36 hours, Mr. Khalil was held incommunicado as his attorneys and family frantically tried to find and contact him. JA1040-42 ¶¶51, 54-56. While detained in Manhattan on the night of March 8, Mr. Khalil was presented with a Notice to Appear (“NTA”) for removal proceedings in Jena, Louisiana, and his requests to

speaking with his lawyer were repeatedly denied. JA1043 ¶¶59-60. Respondents charged Mr. Khalil as deportable under 8 U.S.C. §1227(a)(4)(C) and 8 U.S.C. §1182(a)(3)(C)(iii) (the “Foreign Policy Ground” or “FPG”), JA1047-48 ¶82, based on a conclusory determination by Secretary of State Marco Rubio (the “Rubio Determination”) that Mr. Khalil’s expressive activity—which was “otherwise lawful”—would “compromise a compelling U.S. foreign policy interest.” JA1023. Such use of the FPG against an LPR for lawful speech inside the United States was unprecedented. JA1416-17 ¶¶9-10; App. 180a-91a; JA1057-62.³

That same day, Respondent Trump issued a statement applauding Petitioner’s arrest, warning that it was “the first of many to come,” and promising to “find, apprehend, and deport” students engaged in “pro-terrorist, anti-Semitic, anti-American activity.” JA1045 ¶73. Respondent Rubio affirmed that he would be “revoking the visas and/or green cards of Hamas supporters in America so they can be deported.” JA1046 ¶75. The next day, DHS confirmed Petitioner’s arrest and, providing no evidence, accused him of leading “activities aligned to Hamas.” JA1046-47 ¶¶76, 81.

Confirming the validity of Petitioner’s claims before the habeas court, a federal court later found, following a nine-day bench trial, that the federal government pursued a policy of subjecting Petitioner and four other noncitizen students and scholars to

³ Following Mr. Khalil’s detention in March 2025, counsel is aware of at least a dozen instances in which the government has detained and/or sought to remove noncitizens based on the FPG.

immigration enforcement in a “viewpoint-discriminatory way to chill protected speech” and threaten other “similarly situated noncitizen[s] (and other[s])” into “silence because their views were unwelcome”—which violated the First Amendment and standing DHS policy against speech-based removals. *Am. Ass’n of Univ. Professors v. Rubio*, 802 F. Supp. 3d 120, 173, 175 (D. Mass. 2025), *appeal filed*, No. 26-1195 (1st Cir. Feb. 24, 2026) (“*AAUP*”). That court, addressing the (false) accusation that Mr. Khalil is a Hamas supporter, also observed that, “[i]f ‘terrorist’ is interpreted to mean ‘pro-Palestine’ or ‘anti-Israel,’ and ‘support’ encompasses pure political speech, then core free speech rights have been imperiled.” *Id.* at 193. *See also Stanford Daily Publ’g Corp. v. Rubio*, No. 25-cv-6618, 2026 WL 2549090 (N.D. Cal. Aug. 28, 2026) (holding government’s use of the FPG to retaliate against Petitioner and other noncitizens violates First Amendment), *appeal filed* (9th Cir. Oct. 14, 2026).

B. Proceedings Below

Within hours of his March 8 arrest, Mr. Khalil’s lawyers filed a habeas petition in the Southern District of New York challenging his detention on various constitutional grounds. JA1041, JA1050-54 ¶¶54, 90-101. A week later, after public outcry over his arrest and just two business days after he amended his petition to challenge the constitutionality of the Rubio Determination and FPG, Respondents levied a second immigration charge alleging willful misrepresentations of material facts on Petitioner’s green card application. JA1049-50 ¶88. Documents released through the *AAUP* trial

revealed that a high-level State Department official acknowledged that Petitioner had no criminal history, that DHS had not identified “any alternative grounds of removability,” and that he considered the existing FPG charge vulnerable to legal challenge. 802 F. Supp. 3d at 142-44.⁴ The lodging of a post-hoc misrepresentation charge in such circumstances was almost unheard of, as numerous experts have explained, without rebuttal from the government. JA1388 ¶15; JA1392-94 ¶¶6-19; JA1418 ¶¶16-18; JA1546-47. Petitioner maintains that this post-hoc charge was a mere extension of the government’s unconstitutional retaliation against him for his political advocacy. JA1050 ¶89.

Mr. Khalil’s operative Third Amended Petition presents several claims. First, the government’s use of the FPG and the misrepresentation charge to detain and remove him constituted unconstitutional retaliation and viewpoint discrimination in violation of the First Amendment. JA1050-51 ¶¶90-92. Second, his detention violated the Fifth Amendment because it was punitive and bore no reasonable relation to a legitimate government interest. JA1051-52 ¶¶93-97. Third, the government’s policy of arresting and removing noncitizens based on protected speech was arbitrary and capricious, an abuse of discretion, contrary to law and the Constitution, and in excess of statutory jurisdiction under the Administrative Procedure Act (“APA”), and further violated *Accardi v.*

⁴ Discovery in Petitioner’s habeas case was held in abeyance pending the Third Circuit appeal. As described below, he has not been afforded an opportunity to develop a factual record on his constitutional claims either through the administrative process or via a transfer to a district court pursuant to the Hobbs Act.

Shaughnessy, 347 U.S. 260 (1954), owing to an extant DHS policy proscribing speech-based removals. JA1052-53 ¶¶98. The petition also sought Mr. Khalil’s release on bail pending adjudication of his habeas action. JA1053-54 ¶¶99-101.

Ten days after Mr. Khalil filed his original petition, the Southern District of New York transferred it to the District of New Jersey, where he was detained, unbeknownst to his attorneys, at the time the petition had been initially filed. JA535-67. The district court issued an order preventing Mr. Khalil’s deportation pending adjudication of his habeas petition. JA568. In the new venue, Petitioner filed memoranda of law supporting his pending motions. Am. Mem. of Law in Supp. of Mot. for Release, *Khalil v. Trump*, No. 25-cv-01963 (D.N.J. Mar. 20, 2025), ECF No. 93; Suppl. Mem. of Law in Supp. of Mot. to Compel Return, *Khalil v. Trump*, No. 25-cv-01963 (D.N.J. Mar. 21, 2025), ECF No. 96; Am. Mem. of Law in Supp. of Mot. for Prelim. Inj., *Khalil v. Trump*, No. 25-cv-01963 (D.N.J. Mar. 25, 2025), ECF No. 124; JA1785-88.

The new district court then proceeded to decide the multiple issues before it. First, it issued an opinion accepting transfer of the petition as a matter of habeas jurisdiction. JA34–100. Next, it issued a thorough opinion concluding that no provision of the INA, including §1252(b)(9), deprived it of subject matter jurisdiction. App. 248a-403a.

Then, on June 11, the court issued a preliminary injunction (“PI”) prohibiting Respondents from detaining or seeking to remove Mr. Khalil based on the ground that the FPG as applied to Petitioner is

likely unconstitutionally vague, App. 86a-87a n.7, 93a-94a; *see also* App. 96a-247a,⁵ at which point the government shifted its justification for Petitioner’s detention to the misrepresentation charge. JA1439.

While habeas proceedings were ongoing, the government hurriedly scheduled removal proceedings. The habeas court later determined that Respondents had taken actions in Petitioner’s immigration proceedings that were “directly inconsistent with” its injunction against the application of the FPG, JA25, JA32-33 n.5; Order at 1-2, *Khalil v. Trump*, No. 25-cv-01963 (D.N.J. July 16, 2025), ECF No. 350, and ordered Respondents to take certain steps to comply with its injunction. JA28-32.

On June 20—after Mr. Khalil had spent 104 days in detention, which deprived him of presence at the birth of his first child—the district court held a bail hearing and ordered Petitioner’s release. JA22-23; JA377. The court cited extensive evidence of extraordinary circumstances, including un rebutted evidence of a complete lack of flight risk and dangerousness, to which Respondents had “opted to say nothing in response,” JA369; *see* JA336, JA351, JA355, JA368, JA370, JA372. *See also* JA337-76 (applying applicable bail standards). The court emphasized that un rebutted evidence indicated that the government’s sole reliance on the misrepresentation charge for Petitioner’s detention was “highly, highly, highly unusual,” JA371, and raised a strong inference the government was using

⁵ The court did not reach Mr. Khalil’s other claims raised in support of his preliminary injunction motion, including his First Amendment retaliation claim and his substantive due process claim.

this second charge “to punish the petitioner,” which, “of course . . . would be unconstitutional.” JA375-76.

C. Decision Below

On appeal, a divided Third Circuit panel reversed the district court’s preliminary injunction and bail orders on jurisdictional grounds, concluding that §1252(b)(9) strips federal courts of subject matter jurisdiction over Petitioner’s First and Fifth Amendment challenges to not only his removal but also to his unlawful detention. While the panel unanimously held that the district court had habeas jurisdiction over the petition, App. 9a-20a, the court did not decide the merits of the injunction or bail order.

The majority held that if a claim “raise[s] legal or factual *questions* that a court of appeals” can “review meaningfully on a PFR,” then (b)(9) channels that claim to a PFR, and it cannot be heard in habeas. App. 23a-24a (emphasis in original). The court first pointed to (b)(9)’s reference to “[j]udicial review of all questions of law and fact,” distinguishing such “questions” from “harms” flowing from a putatively unconstitutional detention. *Id.* The majority then relied on (b)(9)’s “purpose” “as a ‘zipper’ clause, channeling ‘most claims that even relate to removal’ into PFRs,” App. 24a (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“AADC”) and *E.O.H.C. v. Sec’y U.S. Dep’t of Homeland Sec.*, 950 F.3d 177, 184 (3d Cir. 2020)), such that “[l]etting petitioners raise now-or-never injuries through habeas based on claims that can be litigated later would subvert that channeling scheme.” *Id.*

The majority considered Petitioner's claims, concluding that "[e]ach of the legal questions Khalil raised in his petition can be decided later, on a PFR," and that as a result, Mr. Khalil "can get meaningful review." App. 25a-26a.

The majority went so far as to hold that Petitioner's distinct challenges to his unconstitutional detention were also foreclosed from habeas review. As to the detention challenges, the majority held that, while the claims challenged a different governmental action (detention) and required a different remedy (release), under its reading of (b)(9), they presented "identical" legal "questions," App. 27a, which could be raised on a PFR designed only to hear challenges to removal. The majority acknowledged that Petitioner did bring a "detention-specific claim" that "the government violated the Fifth Amendment's Due Process Clause by arresting and continuing to punish him." App. 28a. But, without addressing the elements of any of the claims, it read that claim, and the independent harms it produced, as "just repackag[ing] his challenges to his removal." *Id.*

In reaching these conclusions, the panel rejected all of Petitioner's arguments to the contrary.

First, it rejected the argument that (b)(9)'s prefatory text limits the section's channeling effect to challenges in which the BIA has issued a final order of removal (which it had not when the majority issued its opinion or when the district court assumed jurisdiction). App. 29a-31a (reading the plurality opinion in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), to be the controlling holding and to abrogate Third Circuit precedent reaching the opposite conclusion).

Second, it rejected Petitioner’s argument that “his detention challenges count” as the types of claims that are “exempt from channeling under” (b)(9). App. 33a (distinguishing Petitioner’s challenge to “the mere fact of detention” from challenges to “the conditions in which he was being held”).

Third, the majority (briefly and without analysis) rejected Petitioner’s arguments that reading (b)(9) to so delay review would raise “First Amendment and Suspension Clause problems.” *Id.*

Finally, the majority rejected Petitioner’s argument that the unavailability of any fact development in the immigration process would deny him meaningful review of his constitutional claims, and held that in any event, “the PFR court can deal with the problem” by relying on “a provision of the Hobbs Act” which the majority read to allow “the PFR court [to] remand a case to a district court for a hearing with more factfinding.” App. 34a-37a.

In partial dissent, Judge Freeman explained that the majority’s reading of (b)(9) conflicts with the Third Circuit’s precedent and “renders meaningful review hollow” because, unlike in habeas, even if a PFR court vacates Petitioner’s removal order, “that would not redress the First Amendment injuries [he] sustained while detained.” App. 55a.

On May 22, the Third Circuit denied en banc review by a vote of 6 to 5. App. 404a-05a. Three judges issued a written dissent, explaining that the panel majority had interpreted (b)(9) “in a way that contravenes the plain language of the statute, ignores canons of statutory construction, strains precedent, vitiates the Great Writ, and imperils the civil liberties

of Petitioner Mahmoud Khalil and similarly situated noncitizens.” App. 406a. The dissent noted that Petitioner’s “loss of his First Amendment freedoms while detained” is a now-or-never injury, App. 411a, and that his Fifth Amendment claim is “detention-specific, notwithstanding any overlap between it and his claims that his removal is unconstitutional.” App. 415a. The dissent also stated that the PFR process was not an “adequate substitute” to habeas adjudication of such now-or-never claims, such that the majority’s holding runs afoul of the Suspension Clause. App. 417a.

REASONS FOR GRANTING THE PETITION

I. THE THIRD AND FOURTH CIRCUITS ARE IN DIRECT CONFLICT REGARDING THE EFFECT OF §1252(B)(9) ON HABEAS CHALLENGES TO PUNITIVE AND RETALIATORY IMMIGRATION DETENTION.

In a case challenging nearly identical actions to detain and remove noncitizens under the FPG, the Fourth Circuit expressly pronounced its disagreement with the court below and its reasoning, concluding that because noncitizens cannot get meaningful review of claims of punitive and retaliatory detention through the administrative process and on a PFR, (b)(9) does not bar such otherwise-nonreviewable claims in habeas. *Suri*, 184 F.4th at 275, 294-97.

This represents a clear circuit split that will not get resolved absent this Court’s intervention. The United States agrees. *See Suri* Pet. at 20 (“The Fourth Circuit

expressly created a circuit conflict on the question presented.”); *id.* at 5 (urging this Court to review both cases).

A. The court below held that §1252(b)(9) strips federal courts of subject matter jurisdiction over such habeas petitions.

The court below held that (b)(9) strips federal district courts of jurisdiction over challenges to unconstitutionally retaliatory and punitive immigration detention where those challenges raise, in its view, “identical” legal “questions” to removal claims that the majority concluded were also channeled by (b)(9). App. 27a. This included both First and Fifth Amendment challenges to detention, which the majority viewed as one and the same. App. 25a-27a. It found no constitutional concern with this result because, in its view, the legal questions in such detention challenges can be adequately reviewed through a PFR (and factually developed through a Hobbs transfer) irrespective of whether the PFR could ever remedy the constitutional injuries. *Id.*; App. 34a-37a.

Subsequently, in *Mahdawi v. Trump*, 183 F.4th 103, 113 (2d Cir. 2026), a panel of the Second Circuit joined the Third Circuit’s holding in finding the district court lacked subject matter jurisdiction to review First and Fifth Amendment challenges to detention raised by another habeas petitioner charged under the FPG.

On September 3, 2026, the Second Circuit *sua sponte* granted en banc review in *Mahdawi*. *Mahdawi*

v. Trump, No. 25-1113 (2d Cir. Sept. 3, 2026) (order granting en banc review).⁶ The Second Circuit’s eventual decision will only broaden the extant split.

B. The Fourth Circuit expressly rejected the Third Circuit’s decision, holding that §1252(b)(9) does not bar habeas review over such “now-or-never” constitutional claims.

A divided panel of the Fourth Circuit in another habeas case involving a challenge to retaliatory and punitive detention explicitly disagreed with the Third Circuit and the then-prevailing Second Circuit opinion, and held that (b)(9) does not foreclose habeas review of such challenges to detention. *Suri*, 184 F.4th at 275; *see id.* at 294 n.25 (noting the Second Circuit’s opinion in *Mahdawi* “largely reiterates the Third Circuit’s reasoning in *Khalil*”); *see also id.* at 307 (Wilkinson, J., dissenting).

First, after reciting this Court’s repeated command to presume the availability of judicial review, *id.* at 284 (majority op.) (quoting *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 137 (2020)), the Fourth Circuit panel explained that “each and every time the Government has tried to invoke these *removal*-focused jurisdiction-stripping provisions”—including §1252(g) and §1252(b)(9)—to foreclose challenges to immigration detention, the Supreme Court has rejected those attempts. *Id.*

⁶ The Second Circuit specified that en banc proceedings would be held in abeyance should the Supreme Court grant certiorari on the question of whether district courts lack subject matter jurisdiction to grant habeas under 8 U.S.C. §1252. *Id.* at 2.

(citing, among others, *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021)). As the court explained:

This unbroken line of caselaw also accords with common sense: if a noncitizen is challenging their detention pending removal, then waiting for their removal proceedings does them no good. . . . This ‘absurd’ reading of the INA would make such detention claims ‘effectively unreviewable,’ and the Supreme Court has repeatedly refused to embrace it.”

Id. (quoting *Jennings*, 583 U.S. at 293 (plurality op.)).

Second, in direct disagreement with the Second and Third Circuit’s conclusions that the petitioners’ detention claims were the same as challenges to removal, the Fourth Circuit clarified that even if there were “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.” *Id.* at 293, 296 (“Suri is not arguing that he may not be detained pending removal because he may not be removed. . . . His argument is that even if he *can* be removed, the decision to detain him pending removal is independently constitutionally flawed.”); *see also Öztürk v. Hyde*, 155 F.4th 187, 209-10 (2d Cir. 2025) (Nathan, J., concurring in denial of en banc review) (similar).

Third, following its own precedent, the court held—directly in contrast to the conclusions of the Third Circuit (and the Second Circuit panel)—that (b)(9) applies only to challenges to a final order of removal (which the petitioner had not yet received). *Suri*, 180 F.4th at 289. Notably, the court rejected the reading of the various opinions in *Jennings* that the Third Circuit had adopted to abrogate its prior precedent, which had also held that (b)(9) did not apply in cases where there was no final removal order. *See id.* at 291-96.

Fourth, the Fourth Circuit held that the petitioner’s Due Process claim challenging unlawful detention (which is identical to Petitioner’s) is “independent from and do[es] not implicate” the government’s decision to seek his removal. *Id.* at 293 (“Suri seeks relief from a ‘punitive’ detention that bore ‘no “reasonable relation” to any governmental purpose” and “[t]hese claims are specific to his detention” and “do not implicate . . . the Government’s decision to seek removal.” (cleaned up) (quoting *Regents*, 591 U.S. at 19)).

II. THE HOLDING BELOW CONFLICTS WITH THIS COURT’S PRECEDENT INTERPRETING §1252(B)(9), THE SUSPENSION CLAUSE, AND THE FIRST AND FIFTH AMENDMENTS.

The decision below not only conflicts with the decision of the Fourth Circuit, but it is also wrong under this Court’s precedent.

A. The decision below contravenes this Court’s precedent addressing §1252(b)(9), which requires the availability of meaningful review of detention claims.

Consistent with the “well-settled” and “strong presumption” favoring judicial review, *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020) (citations and quotations omitted), the Court has repeatedly rejected an expansive reading of (b)(9). *Regents*, 591 U.S. at 19 (emphasizing that (b)(9)’s “targeted language” is “narrow”). Applying (b)(9) to detention claims would render them “effectively unreviewable.” *Jennings*, 583 U.S. at 293 (plurality op.); *see also* *Guzman Chavez*, 594 U.S. at 533 n.4 (plurality op.); *Nielsen v. Preap*, 586 U.S. 392, 402 (2019) (plurality op.). In *Jennings*, a plurality of the Court explained that (b)(9) must be interpreted narrowly to avoid “extreme” results. 583 U.S. at 293-94 (instructing that courts must “eschew[] uncritical literalism” when interpreting such “capacious phrases” as “arising from” (cleaned up) (collecting cases)). Thus, *Jennings* concluded that (b)(9) did not apply to prolonged detention claims, because by the time a final order of removal is entered, the unconstitutional detention “would have already taken place” such that petitioners would be deprived of any “meaningful chance for judicial review.” *Id.* at 293.

In *Regents*, this Court adopted that limiting aspect of *Jennings*, holding 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.” 591 U.S. at 19 (cleaned up). That description of claims that lie outside (b)(9) applies here: a claim that ongoing detention is unlawful, including because it is punitive and retaliatory in violation of the First and Fifth Amendments, does not seek review of any of those removal-related determinations described in *Regents* and thus falls outside the channeling process.⁷

This Court’s narrow reading of (b)(9) is reinforced by the INA’s statutory structure, which treats detention and removability as separate legal inquiries. Executive detention is a deprivation of liberty that is distinct from removal, particularly as the removal can happen without detention. It requires separate justifications, *see Zadvydas*, 533 U.S. at 690-96 (immigration detention must be predicated on flight risk or danger); implicates different statutes, *compare* 8 U.S.C. §1226 (detention) *with* 8 U.S.C. §1227 (removability); and is 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); *see also* 8 C.F.R. §1003.19(d) (“Consideration by the Immigration Judge of an application or request of a respondent regarding

⁷ The Court’s interpretation of (b)(9) to incorporate a “meaningful review” standard is part and parcel of the Court’s decision in *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994), which established the framework for determining when a litigant can seek immediate review in federal courts versus when they must first submit to agency proceedings. *See id.* at 212-13; *Axon Enter., Inc. v. Fed. Trade Comm’n*, 598 U.S. 175, 184-86 (2023); *see also Massieu v. Reno*, 91 F.3d 416, 420-22 (3d Cir. 1996) (Alito, J.) (applying *Thunder Basin* factors to noncitizen’s facial challenge to FPG).

custody or bond under this section shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding.”). Yet the lower court’s panel majority interpreted a provision limited to “Judicial review of orders of *removal*,” 8 U.S.C. §1252 (emphasis added), to bar habeas review of a claim of unconstitutional *detention*. App. 23a-25a. The majority below largely ignored the important distinctions between removal challenges and detention challenges present throughout the INA and this Court’s precedents.

And, as the *Jennings* plurality made explicit in emphasizing the necessity of affording detainees a “meaningful chance for judicial review,” the problem with an interpretation of (b)(9) that barred habeas review of a prolonged detention claim was that “[b]y the time a final order of removal was eventually entered, the allegedly excessive detention would have already taken place.” 583 U.S. at 293. *Jennings*’ focus on the irreparable *harm* of such detention, rather than the inability of a PFR court to address the factual and legal *questions* raised by the claim, is unmistakable and clearly irreconcilable with the lower court’s opinion. A claim of unconstitutional detention and censorship, as in this case, “is a ‘now or never’ injury” because “if it is not redressed until after removal proceedings, then it cannot be redressed at all.” *Suri*, 180 F.4th at 297; *see also E.O.H.C.*, 950 F.3d at 180 ((b)(9) does not foreclose contemporaneous habeas review “[w]hen a detained alien seeks relief that a court of appeals cannot meaningfully provide on petition for review of a final order of removal”); *Aguilar v. U.S. Immigr. & Customs Enf’t Div. of Dep’t of Homeland Sec.*, 510 F.3d 1, 14 (1st Cir. 2007)

(underscoring importance of “irreparable injury” in assessing scope of §1252(b)(9)).

The majority below proclaims, with little explanation, that Petitioner’s detention claims are unlike the conditions-of-confinement and prolonged detention claims that this Court has exempted from (b)(9) channeling. *See* App. 28a-31a (prolonged detention); App. 33a (citing *Jennings*, 583 U.S. at 294) (conditions). But the hypothetical detainee alleging inhumane conditions in detention (like being deprived of Kosher food, *see* App. 33a), is no different from Petitioner, who was unjustifiably placed in detention (and deprived, via censorship and punitive detention, of his speech and liberty). Both detainees claim that some aspect of their detention is unlawful; and an ongoing deprivation of liberty or speech, just like an ongoing deprivation of Kosher meals, cannot be meaningfully remedied after-the-fact. Further, nothing in (b)(9)’s text suggests district courts would be stripped of jurisdiction to hear one type of detention claim and not the other.

Critically, in reassuring itself that detention-related questions can be resolved via the removal process, the court below ignores the possibility that “no [removal] order would ever be entered.” *Jennings*, 583 U.S. at 293. In such a case, there would *never* be any federal court review of the legality of months or even years of unlawful executive censorship and punishment through detention.

Ultimately, the majority rests its decision in part on an incorrect weighting of the interests at stake. The majority worried about the possibility that habeas review could have a preclusive effect on subsequent

PFR proceedings. App. 23a-25a. To begin, this fails to acknowledge Petitioner’s independent, non-overlapping claim that his detention is being imposed for reasons unrelated to flight risk or dangerousness in violation of Due Process. JA1051-52 ¶¶93-97; JA 370. Such a claim has no preclusive effect on removal proceedings, because people may be removed for reasons other than flight risk or dangerousness and these issues would not be considered in PFR proceedings.

In any event, policy concerns about the specter of potential future overlap or preclusion in a removal case cannot override the profound constitutional concern arising from an interpretation of (b)(9) that permits the executive to engage in retaliatory and punitive detention to censor speech for years without any judicial review, and in some cases likely evade such review entirely. *See Will v. Hallock*, 546 U.S. 345, 355 (2006) (preclusion concerns have “not been thought to protect values so great” as to warrant exceptions to jurisdictional rules). As *Jennings* made clear, courts should not read (b)(9) to sweep up “extreme” cases like this one, where the government is weaponizing immigration detention for a blatantly impermissible purpose, such as to punish and silence views it dislikes. 583 U.S. at 293; *cf. Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175, 194 (2024) (“[T]hreaten[ing] to wield [government] power” through use of otherwise valid enforcement authority “to punish [protected] advocacy . . . violates the First Amendment.”).

B. Denying habeas review for such “now or never” detention claims raises serious questions under the Suspension Clause.

Where a statute has more than one plausible interpretation, courts must apply the canon of constitutional avoidance to avoid the interpretation that presents serious constitutional problems. *Clark v. Martinez*, 543 U.S. 371, 380-81 (2005). The majority’s interpretation of (b)(9) would violate the Suspension Clause as applied to Petitioner and therefore should be rejected.

Habeas “is at its core a remedy for unlawful executive detention.” *Thuraissigiam*, 591 U.S. at 119 (cleaned up). In a challenge to executive detention, “the need for collateral review is most pressing.” *Boumediene v. Bush*, 553 U.S. 723, 783 (2008). For that reason, this Court has required a clear statement before construing a statute to bar habeas review. *Immigr. & Naturalization Serv. v. St. Cyr*, 533 U.S. 289, 301, 314 (2001). Habeas protections are particularly substantial where, as here, Petitioner is (1) detained “by executive order, rather than, say, after being tried and convicted in a court,” *Boumediene*, 553 U.S. at 783, and (2) an LPR with close familial and other relationships to the United States, and correspondingly-broad constitutional protections. See *Landon v. Plasencia*, 459 U.S. 21, 32-33 (1982).

The majority dispensed with the Suspension Clause in eleven words. App. 34a (citing only *Luna v. Holder*, 637 F.3d 85, 95 (2d Cir. 2011) (holding that

PFR was adequate habeas substitute to address *non*-detention claims that could only be raised through a motion to reopen (“MTR”), because the government could not manipulate the statutory MTR process and denials could be meaningfully reviewed on a PFR)). But its sweeping conclusion conflicts with this Court’s Suspension Clause precedent.

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). At a minimum, the Constitution requires that this alternative must provide a petitioner with “a meaningful opportunity to demonstrate that he is being held” unlawfully and “have the power to order the conditional release of an individual unlawfully detained.” *Boumediene*, 553 U.S. at 779. Under the Suspension Clause, “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. It is not, as the majority below suggests, whether a PFR provides an adequate substitute for adjudicating overlapping legal and factual *questions* raised in the habeas petition. App. 23a. In other words, in the majority’s incorrect view, because Congress has provided a PFR forum to decide questions regarding Petitioner’s removability, Congress also eliminated review over ongoing detention, even though that unlawful detention could never be remedied via release except through a contemporaneous habeas action demonstrating the detention’s present illegality.

A PFR that allows Petitioner to challenge his illegal detention only indirectly via review of the validity of his *removal* order many months or years after the executive’s punitive purpose and retaliatory chilling effect have been accomplished is not an adequate or effective alternative to habeas review. Where this Court has found a habeas substitute to be adequate and effective, “the purpose and effect of the substitute was to expedite consideration of the detainee’s claims, not to delay or frustrate it.” *Boumediene*, 553 U.S. at 775-76.

A noncitizen may file a PFR only after a final order of removal has been entered. *See* 8 U.S.C. §1252(a)(5). But “[b]y the time a final order of removal [i]s eventually entered,” assuming one is ever entered, allowing a PFR to be filed and eventually decided, “the allegedly [unlawful] detention would have already taken place,” *Jennings*, 583 U.S. at 293, and in such a case as this, for a period of many months or years. The serious First Amendment censorship harms likewise cannot be undone even if a court eventually does conclude on a PFR that he is not removable. And non-overlapping claims, such as his Due Process claim that his detention is punitive and not justified by flight risk or danger, would remain completely unreviewed.

Moreover, unlike a habeas court, the administrative review and PFR process does not permit factual development on Petitioners’ constitutional claims, and the panel majority’s conclusion that a Hobbs Act transfer could fulfill the necessity of fact-finding in his case was summarily rejected by the PFR court in Petitioner’s removal case. *Khalil v. Blanche*, No. 26-60344 (5th Cir. Sep. 9, 2026),

ECF No. 150-1. *See* App. 326a (ability of immigration courts and BIA to develop an adequate record is so limited that after lengthy delays “there will be little or nothing to show for it”); *cf. Boumediene*, 553 U.S. at 792 (availability of fact development and contestation is key consideration in “adequate substitute” determination). A venue that cannot remedy ongoing harms from detention and First Amendment chill and that does not provide for the development of a factual record necessary to evaluate such constitutional claims cannot be an adequate alternative to habeas.

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. at 765-66. But the majority’s reading of (b)(9) would permit brazen abuse of the Great Writ, enabling the government to levy a spurious immigration charge against a noncitizen, including in avowed retribution for speech, and forestall federal court review of its unlawful actions by prolonging administrative removal proceedings and/or terminating them after it has sufficiently accomplished its desired detention and censorship. That the government has engaged in an abuse of its authority by adopting a viewpoint-discriminatory policy of retribution against Petitioner and other non-citizen pro-Palestinian advocates—via an immigration process the executive fully controls, *see Duenas v. Garland*, 78 F.4th 1069, 1073 (9th Cir. 2023)—has been confirmed by a federal court after extensive fact-finding. *See AAUP*, 802 F. Supp. 3d at 173 (finding a government policy “to target a few for speaking out and then use the full rigor of the

Immigration and Nationality Act . . . with the goal of . . . terrorizing similarly situated non-citizen (and other) pro-Palestinians into silence because their views were unwelcome.”); *see also Stanford Daily*, 2026 WL 2549090 at *32 (“The government has offered a chilling message regarding protected speech—speak out against Israel or in support of Palestinians and we will revoke your visa and deport you. Behave.”); JA375-76 (stating of the use of the post-hoc misrepresentation charge, “there is . . . something to the underlying claim that there is an effort to use the immigration charge here to punish the petitioner,” which “of course . . . would be unconstitutional”).

The majority below should have avoided the serious conflict with this Court’s Suspension Clause precedent by interpreting (b)(9) to permit habeas review of the substantial censorship and speech-chilling injuries the government has vigorously pursued against Petitioner.

C. The Third Circuit’s reading of §1252(b)(9) conflicts with this Court’s First Amendment precedents requiring timely review of censorship claims.

This Court has repeatedly recognized 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., First Choice Women’s Res. Ctrs., Inc. v. Davenport*, 608 U.S. 174 (2026) (party alleging chilling effect on First

Amendment associational rights from a state investigatory subpoena had access to immediate federal court review); *Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46, 55-56 (1989) (delayed review might “seriously erode federal policy” by “only further harm[ing] the operation of a free press” (cleaned up)); *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”); *Freedman v. Maryland*, 380 U.S. 51, 58-59 (1965) (“only a judicial determination in an adversary proceeding ensures the necessary sensitivity to freedom of expression,” and that such a determination must occur within “the shortest fixed period compatible with sound judicial resolution”); *Dombrowski v. Pfister*, 380 U.S. 479, 487 (1965).

As Justice Ginsburg explained in *AADC*, immediate judicial intervention is necessary for “now or never” First Amendment claims. 525 U.S. at 498 (Ginsburg, J., concurring). It is also consistent with this Court’s recent approach to other “here-and-now injur[ies]” stemming from administrative proceedings that cannot be remedied after-the-fact. *Axon*, 598 U.S. at 191; *see* App. 365a-366a (“Our law’s response to a here-and-now impact on political speech has been the same across the board: no unnecessary delay.” (discussing cases)).

Petitioner’s detention claims seek redress of First Amendment harms that are, by their very nature, irreparable. App. 390a; App. 206a-210a; *see Am. Ass’n of Univ. Professors v. Rubio*, 823 F. Supp. 3d 94, 108 (D. Mass. 2026) (“Proceeding through the

administrative process—controlled by Article II administrative hearing officers—is exactly the injury that [the government] intend[s], and exacerbates the injury.” (cleaned up)). The majority below forecloses review of these now-or-never claims by requiring people like Mr. Khalil to wait until they are ordered removed (if that ever happens) and then to file a PFR and await that potentially lengthy outcome. This is not meaningful review or actual remediation of First Amendment harms that would be ongoing for months or years until the conclusion of a PFR process, if one happens. App. 55a-56a; *see also Webster v. Doe*, 486 U.S. 592, 603 (1988) (in absence of a clear congressional statement, courts must interpret statutes to “avoid the serious constitutional question that would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim” (cleaned up)).

D. The Fifth Amendment also requires review of Petitioner’s detention claims.

Because immigration detention is “civil, not criminal,” the Fifth Amendment requires it to be “nonpunitive in purpose and effect.” *Zadvydas*, 533 U.S. at 690. A noncitizen who poses a flight risk or danger may be detained pending removal proceedings, but due process forbids the government “to incarcerate for other reasons.” *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring). Petitioner argues that his detention—which was not mandated by any statutory provision—was not based on flight risk or dangerousness and was therefore unjustified, excessive, and punitive. JA1051-52 ¶¶95-96. The PFR

process cannot address the now-or-never question of whether Petitioner’s putative civil detention is punitive in contravention of the Fifth Amendment, nor can the PFR process remediate the irreparable harm of unlawful detention after-the-fact.

III. THE THIRD CIRCUIT’S CONCLUSION THAT §1252(B)(9) STRIPS HABEAS JURISDICTION OVER CHALLENGES TO THE EXECUTIVE’S OTHER ACTIONS AIMED AT CHILLING SPEECH ALSO CONFLICTS WITH THIS COURT’S PRECEDENTS, THE SUSPENSION CLAUSE, AND THE FIRST AND FIFTH AMENDMENTS.

The majority’s refusal to allow habeas review of Petitioner’s claims that the government’s viewpoint discriminatory policy, the Rubio Determination, and other actions taken prior to and in the course of his removal proceedings were designed to punish his speech and chill others (as the *AAUP* and *Stanford Daily* courts concluded) also conflicts with this Court’s precedent. “Some ‘judicial intervention in deportation cases’ is unquestionably ‘required by the Constitution,’” *St. Cyr*, 533 U.S. at 300 (quoting *Heikkila v. Barber*, 345 U.S. 229, 235 (1953)), and that review must be adequate and effective, *id.* at 305. First Amendment claims in particular demand urgent and prompt review. *See supra* II.C. The PFR process is inadequate because it fails to provide necessary factfinding on retaliation and because judicial review comes too late to redress the First Amendment injury. And, it can do nothing where, as here, the removal process is pursued in part to detain an individual and

to maximize the in terrorem effect of the executive's viewpoint discriminatory policy.

The panel found delay acceptable, without contending with longstanding First Amendment precedent. App. 25a. And the panel majority sidestepped the factfinding issue by pointing to a provision of the Hobbs Act that allows the PFR court to remand for factfinding. App. 35a-37a. But no such factfinding has taken place. Discovery in Petitioner's habeas case was held in abeyance pending the Third Circuit appeal, and the Fifth Circuit has summarily denied the factual development the Third Circuit assured Petitioner would be available to him via the Hobbs Act, *Khalil v. Blanche*, No. 26-60344 (5th Cir. Sep. 9, 2026), ECF No. 150-1, leaving Petitioner devoid of the factual development necessary to render a process an adequate substitute for habeas.⁸

Finally, while Petitioner's challenges to detention and the efforts that have served as a basis to remove him are distinct, the majority found that (b)(9) stripped the habeas court's jurisdiction to hear Petitioner's detention claims because he raised "legal questions challenging the government's very basis for trying to remove (and thus detain[]) him." App. 23a. Under this Court's recent decision in *Trump v. J.G.G.*, 604 U.S. 670 (2025), however, this overlap counsels *in favor* of application of the Suspension Clause, as

⁸ Petitioner has benefitted from the factual development and findings from the *AAUP* trial establishing the existence of a viewpoint discriminatory-policy targeting Petitioner, but that fortuity cannot resolve the question of whether meaningful review of retaliatory removal proceedings is available in an administrative process that is generally not designed to permit factual development.

removal claims that “‘necessarily imply the invalidity’ of [confinement] . . . fall within the ‘core of the writ of habeas corpus.’” 604 U.S. at 672 (cleaned up). The removal process in this case was pursued in part to detain Petitioner. The Suspension Clause carries the most force in the context of these “core claims,” and the Constitution requires an adequate and effective forum for judicial review of these claims.

IV. THE QUESTIONS PRESENTED ARE OF EXTRAORDINARY IMPORTANCE BECAUSE THEY IMPLICATE THE JUDICIARY’S CRITICAL ROLE IN PREVENTING EXECUTIVE ABUSE OF ITS IMMIGRATION-DETENTION POWER TO DEPRIVE INDIVIDUALS OF BASIC CONSTITUTIONAL PROTECTIONS.

The questions ask whether the government can openly target noncitizens for their protected speech and seek to censor speech it disfavors by leveraging its substantial coercive power under the immigration laws—a use of government power this Court has sternly proscribed. *See Vullo*, 602 U.S. at 194. They also ask whether the government can immunize itself from federal court review while it accomplishes the very kind of unconstitutional purpose the courts, and habeas corpus, are meant to guard against.

If the decision stands, the government would be handed a powerful and unprecedented weapon to silence its critics, and to chill the speech of countless others, including citizens, who wish to avoid the government’s wrath against themselves and their loved ones. And the government could avoid *any*

review of *any* legal questions presented by a noncitizen’s detention (or removal efforts) by not entering a final order of removal at all, thereby accomplishing their unconstitutional aims absent any federal court review. All the while, the government’s punishment and chilling message will have been sufficiently delivered to an individual or the public—a goal the government has likely already accomplished through the detention and attempted removal of Petitioner. *Stanford Daily*, 2026 WL 2549090 at *32 (“Noncitizen students heard the [government’s] warning and heeded. And, as the idiom goes, the silence is deafening.”).

Our laws and our Constitution do not permit this kind of malevolent abuse of executive power.

V. A HOLD FOR RESOLUTION OF MR. KHALIL’S PFR IN THE FIFTH CIRCUIT IS ALSO WARRANTED AND FOR ULTIMATE RESOLUTION ALONGSIDE *SURI*.

The Court should grant Mr. Khalil’s petition and hear it alongside *Suri*.

Notably, the Fifth Circuit is currently considering Petitioner’s PFR, having denied his Hobbs Act motion. PFR briefing is scheduled to be completed by early November. *Khalil v. Blanche*, No. 26-60344 (5th Cir. Sep. 9, 2026), ECF No. 156 (order granting Respondent’s motion for extension of time to file brief until October 14, 2026).

The Fifth Circuit’s resolution of the matters presented there is highly relevant to Petitioner’s

claims that the PFR process fails to provide meaningful review and cannot be an adequate substitute for habeas corpus. Moreover, the Fifth Circuit's decision on the merits of Petitioner's claims may affect the scope of the questions this Court should consider on review and may even provide the Court with the opportunity to consider the merits and jurisdictional issues in these cases together.

Ultimately, Petitioner seeks his day in court on his federal claims—a day the court below (and the dissent in *Suri*) erroneously assumed would be provided by the petition-for-review process—in accord with constitutional necessity. Neither Mr. Khalil nor the petitioner in *Suri* is presently detained. It would be appropriate for this Court to hold his petition for certiorari (and the petition in *Suri*) for the Fifth Circuit's resolution of his PFR, and then consider his case, and the exceptionally important issues it presents, at the same time it considers *Suri*.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari or hold the petition (and the petition in *Suri*) pending resolution of Mr. Khalil's PFR before the Fifth Circuit.

Respectfully submitted,

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