IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

RÜMEYSA ÖZTÜRK, *Petitioner*, v. DONALD J. TRUMP, *et al.*, *Respondents*.	Civil Action No. 2:25-cv-00374

SUPPLEMENTAL MEMORANDUM IN FURTHER SUPPORT OF RELEASE UNDER *MAPP v. RENO*

The government has now incarcerated Rümeysa Öztürk for 39 days based on a single op-ed that the First Amendment indisputably protects. Under *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001), she should not remain in detention one more day during the pendency of this litigation.

Ms. Öztürk previously briefed the elements of the applicable *Mapp* test—namely, that her habeas petition raises "substantial claims," and that "extraordinary circumstances" exist "that make the grant of bail necessary to make the habeas remedy effective," *id.* at 230 (cleaned up)—and she incorporates these arguments and supporting documents here. *See* ECF 82-1 to 82-12. Based on those papers, this Court already found that "Ms. Öztürk's Free Speech and Due Process claims are serious," ECF 104 at 62, and that the "government has so far offered no evidence to support an alternative, lawful motivation or purpose for Ms. Öztürk's detention." *Id.* at 48. Two weeks later, these conclusions are only strengthened by the 14 additional days in which Ms. Öztürk has remained incarcerated while experiencing regular asthma attacks alongside the deafening silence of the government's failure to produce any justification for her detention.

After suffering more than five weeks of a detention that is as harmful as it is unlawful, Ms. Öztürk asks this Court to grant her release *pendente lite*. She is not, as the government

previously suggested, requesting that this Court "cure the IJ's denial of her request for release in the immigration court." ECF 103 at 3. Indeed, she is not asking this Court to review the Immigration Judge's bond determination at all. Instead, she is appropriately asking this Court to exercise its independent and equitable habeas authority to make its own determination based on a different analysis that release is necessary to make the habeas remedy effective here. *See, e.g.*, *Castillo-Maradiaga v. Decker*, 12-cv-842, Tr. at 2:20-21, 39:12-40:5 (S.D.N.Y. Mar. 4, 2021) (noting IJ had denied bond days prior before conducting separate analysis and granting bail under *Mapp*), attached as Exh. 1-A. Just two days ago, a sibling court in this District released Mohsen Mahdawi during the pendency of his habeas petition challenging the government's "retaliatory and targeted detention" on the basis of his "constitutionally protected speech." *Mahdawi v. Trump*, -- F. Supp. 3d --, 2025 WL 1243135, at *1 (D. Vt. Apr. 30, 2025) (cleaned up). This Court should now do the same based on Ms. Öztürk's previously submitted briefs and exhibits, coupled with the supplemental arguments below and the attached evidence.

ARGUMENT

I. Ms. Öztürk raises a substantial First Amendment retaliation claim for habeas relief.

"The First Amendment's protection of the right to free speech is often considered the cornerstone of our vibrant American democracy." ECF 104 at 51-52; *see also* ECF 82-1 at 11. Here, Ms. Öztürk's petition demonstrates that the government's actions significantly threaten that bedrock principle, arguing that the government has arrested, transported, and detained her for more than a month in retaliation for her constitutionally protected speech. This Court previously found "in the absence of additional information from the government, the Court's habeas review is likely to conclude that Ms. Ozturk has presented a substantial [First Amendment] claim." ECF 104 at 57-58. As of the time of this filing, no additional information from the government has been forthcoming, while—as described below—Ms. Öztürk is

submitting even *more* evidence to support her retaliation claim. This Court should therefore hold that Ms. Öztürk's petition raises a substantial First Amendment retaliation claim, as she has satisfied the requisite test "(1) that the speech or conduct at issue was protected, (2) that the defendant took adverse action against the plaintiff, and (3) that there was a causal connection between the protected speech and the adverse action." *Demarest v. Town of Underhill*, 2025 WL 88417, at *2 (2d Cir. Jan. 14, 2025) (cleaned up).[1]

A) The no-probable-cause rule does not apply to immigration arrests and detention.

In its April 18th Order, this Court noted that courts apply an additional element to the retaliation analysis within the context of criminal arrests. *See* ECF 104 at 55-56. Specifically, as set forth in *Nieves v. Bartlett*, 587 U.S. 391, 404 (2019), plaintiffs asserting a retaliatory arrest claim must generally *first* establish the absence of probable cause for the arrest *before* they can move to the *Mt. Healthy* test. This Court also noted that it was not clear whether this test applies to the civil immigration detention context, *see* ECF 104 at 56, and, indeed, for several reasons, it does not.

Nieves established the no-probable-cause rule for retaliatory arrest damages claims under § 1983. *See* 587 U.S. at 396-97. The animating principles of that rule do not apply outside that context. To begin, the barriers erected within the context of monetary relief do not, and should not, neatly translate to the recognition of constitutional violations for equitable relief. *See, e.g.*, *Bello-Reyes v. Gaynor*, 985 F.3d 696, 701 n.5 (9th Cir. 2021) (noting "that liability under § 1983 is often limited by competing considerations such as questions of immunity, whereas in habeas confinement that violates the constitution warrants the remedy of release" and that "no individual

[1] This test, along with the corresponding burden shift to the defendant to show that they would have taken the same action in the absence of the protected conduct, is often referred to as the "*Mt. Healthy* test." *See Mt. Healthy Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977).

officer will be held liable for damages in [a] habeas case, whereas such litigation risk was a motivating factor for establishing an objective no-probable-cause rule in *Nieves"*). Justice Gorsuch recognized as much in *Nieves*, stating:

> If the state could use . . . laws not for their intended purposes but to silence those who voice unpopular ideas, little would be left of our First Amendment liberties, and little would separate us from the tyrannies of the past or the malignant fiefdoms of our own age. [. . .] So if probable cause can't erase a First Amendment violation, the question becomes whether its presence at least forecloses a civil claim for damages as a statutory matter under § 1983.

587 U.S. at 412-13 (Gorsuch, J., concurring in part and dissenting in part). In addition, *Nieves* determined the no-probable-cause rule was important because "protected speech is often a wholly legitimate consideration for officers when deciding whether to make an arrest" since "[o]fficers frequently must make split-second judgments" about such matters "and the content and manner of a suspect's speech may convey vital information . . . ." *Id.* at 401 (cleaned up). In contrast, protected speech should *not* inform the government's decision to arrest or detain a noncitizen for an immigration matter, a decision that often occurs well in advance. ICE certainly planned Ms. Öztürk's arrest hours if not days ahead, with plenty of time to identify and plan where she would be detained. *See* ECF 19-1 at ¶ 6.

Reflecting this understanding, "courts have declined to extend *Nieves* beyond the retaliatory arrest setting." *Media Matters for Am. v. Bailey*, 2024 WL 3924573, *12 (D.D.C. Aug. 23, 2024) (declining to apply *Nieves* no-probable-cause standard to First Amendment retaliation claim against civil investigative demands); *see also Bello-Reyes*, 985 F.3d at 700-01 (declining to apply *Nieves* no-probable-cause standard to First Amendment retaliation claim against immigration bond revocation); *cf. Ragbir v. Homan*, 923 F.3d 53, 67 (2d Cir. 2019) (the month before *Nieves*, holding that an "undisputedly valid final order of removal" did not bar a noncitizen's habeas "claim that Government officials sought to deport him in retaliation for his

speech"). *Mahdawi*'s bail analysis similarly did not apply the no-probable-cause rule, proceeding instead directly to the *Mt. Healthy* test. *See* 2025 WL 1243135 at *8-13. This Court should do the same.[2]

B) Ms. Öztürk establishes a substantial claim under the *Mt. Healthy* test.

Turning to that test, Ms. Öztürk "has raised serious arguments on each of these issues such that [s]he has made a 'substantial claim' regarding the alleged violation of [her] First Amendment right." *Mahdawi*, 2025 WL 1243135, at *9. There is no question the op-ed was protected expression, as this Court already held it was "self-evidently speech regarding public issues" that no "reasonable reader" could find fell within the narrow First Amendment exceptions. ECF 104 at 54-55; *see also Mahdawi*, 2025 WL 1243135, at *9-10; ECF 82-1 at 12. There is likewise no dispute that the government's decision to arrest, transport, and incarcerate Ms. Öztürk more than 1,300 miles from her home, her friends, and her academic endeavors is an adverse action. *See* ECF 82-1 at 12-13; *cf. Mahdawi*, 2025 WL 1243135, at *10.

Finally, Ms. Öztürk has presented sufficient evidence on what this Court has highlighted as the "importan[t]" identification of the government's motive for her detention. ECF 104 at 56. As previously briefed, this includes public statements from government officials that Ms. Öztürk's speech motivated their conduct, *see* ECF 12 at ¶¶ 58-62, ECF 82-1 at 8-9, as well as the

[2] If the Court holds that *Nieves* applies—though it does not—Ms. Öztürk would still have a substantial retaliation claim. First, there is no evidence before the Court that the arresting officers had a warrant for her arrest or that she satisfied the statutory requirements for warrantless immigration arrests. *See* 8 U.S.C.§ 1357(a)(2). Second, even if there was probable cause, Ms. Öztürk would fall within one of the exceptions to the no-probable-cause rule, as a "circumstance where officers have probable cause to make arrests, but typically exercise their discretion not to do so." 587 U.S. at 406; *see also* French Decl., Exh. 1-B at ¶ 14 (noting in her experience "ICE has never detained a student following SEVIS termination or visa revocation, even if a criminal charge was involved"); Goss Decl., Exh. 1-C at ¶¶ 7-8 (noting "I have never seen an arrest based on the termination of a SEVIS record" and "I have never seen a student arrested based on a visa revocation").

March 21, 2025 Memorandum from the Department of State to ICE ("DOS Memorandum"), whose solitary cite to any evidence to support Ms. Öztürk's visa revocation was the op-ed, providing evidence that her detention was motivated by the same. *See* ECF 91-1. Moreover, the DOS Memorandum's reference to "ongoing ICE operational security" and accompanying direction that the revocation be "silent" can only be understood to reflect a then-existing plan to arrest and detain Ms. Öztürk based on the op-ed. *See id.* In addition, the temporal proximity of the Canary Mission's posting of Ms. Öztürk's profile with her op-ed in February 2025 to her arrest, transport, and detention in March 2025, *see* ECF 12 at ¶ 17, lends further weight to a causal connection between the two, as does the Trump Administration's pattern of retaliating against noncitizens who advocate for Palestinian rights. *See* ECF 12 ¶¶ 38-57, ECF 82-1 at 6-9; *cf. Ruggiero v. City of Cortland, New York*, 2019 WL 1978623, at *6 (N.D.N.Y. May 3, 2019) (First Amendment retaliation claim survived motion to dismiss in part because of pattern of treatment of both plaintiff and other third parties).

What is more, immigration experts confirm that it is not just the "location, timing and secrecy of Ms. Öztürk's transfers" that was "highly unusual," ECF 82-1 at 17, but also the fact that Ms. Öztürk has been detained *at all* for an F-1 visa revocation. *See* French Decl. ExH 1-B, ¶ 14; Goss Decl. Ex. 1-C, ¶¶ 7-9. "[D]epartures from the normal procedural sequence of governmental decisionmaking" can "afford evidence that improper purposes are playing a role, while [s]ubstantive departures too may be relevant . . . ." *Women's Interart Ctr., Inc. v. N.Y. City Econ. Dev. Corp.*, 2005 WL 1241919, *28 (S.D.N.Y. May 23, 2005) (cleaned up). Consequently, these expert opinions constitute "additional evidence of the connection between Ms. Öztürk's speech and her detention." ECF 104 at 57.

The abundance of evidence Ms. Öztürk has produced stands in stark contrast to the government's lack of any evidence pointing to a single motive for its behavior aside from a

retaliatory one. Instead, approximately one month ago, Secretary of State Rubio obliquely referenced that additional presentations of evidence, "if necessary, will be made in court."[3] Two weeks ago, this Court "invite[d] an immediate submission of any such evidence in this case." ECF 104 at 57. Far from responding, however, the government has objected at every turn to the production of "any such evidence." Following the April 14th hearing in this matter, Ms. Öztürk's counsel requested the memoranda cited in the April 13, 2025 Washington Post article, which this Court described as "important to the resolution of both a request for release on bail and a final determination," ECF 104 at 64, but the government refused, *see* ECF 99 at 5. Ms. Öztürk then moved for the production of these memoranda, *see* ECF 99 at 5, but the government opposed that motion, *see* ECF 103 at 4-6. Once more, Ms. Öztürk requested that these memoranda be provided by May 2, 2025, *see* ECF 108 at 1-7, but as of the time of filing, they still have not been produced.

If *Mt. Healthy*'s burden-shifting framework has any purpose, it must mean that a habeas petitioner establishes a substantial First Amendment claim for the purposes of seeking bail when they have produced a wealth of evidence of a retaliatory motive and the government produces no evidence to the contrary. *Cf. Mahdawi*, 2025 WL 1243135, at * 10 (finding "it is sufficient at this juncture to consider the Government's public statements, including Executive Orders 14161 and 14188, as evidence of retaliatory intent" and that this satisfied the petitioner's "present purpose of raising a 'substantial claim' of First Amendment retaliation").

II. Ms. Öztürk raises a substantial due process claim for habeas relief.

Section 1226(a) generally grants the government discretion regarding the detention of people subject to removal, but "there's no discretion to violate the constitution," ECF 104 at 46

[3] U.S. Department of State, *Secretary of State Marco Rubio Remarks to the Press* (Mar. 28, 2025), https://www.state.gov/secretary-of-state-marco-rubio-remarks-to-the-press-3/.

(cleaned up), and the constitution requires that detention incident to removal "cannot be justified as punishment." *Zadvydas v. Davis*, 533 U.S. 678, 721 (2001) (Kennedy, J., dissenting). Ms. Öztürk raises a substantial due process claim for habeas relief because more than five weeks after her arrest, it is even more plain that her detention is punitive. *See* ECF 82-1 at 13-14.

To put it simply, there is no other explanation for such an unjustified and "highly unusual" action. Goss Decl., Exh. 1-C, ¶¶ 7-9 (attorney who has represented hundreds of students on F-1 visas during 26 years of practice noting that she has never seen ICE detain a student based on F-1 visa revocation or termination of SEVIS record). As Attorney Dahlia French, who has 16 years of expertise leading immigration offices in higher education, explains, in her experience "ICE has never detained a student following SEVIS termination or visa revocation, even if a criminal charge was involved." French Decl., Exh. 1-B, ¶ 14.

The record before this Court demonstrates that the government took this highly unusual action for punitive purposes alone. The single piece of evidence cited in the DOS Memorandum is Ms. Öztürk's op-ed, not only as a reason to revoke her visa, but also to do so "silent[ly]" and without notice. ECF 91-1. The Secretary of State's public comments suggest that Ms. Öztürk's detention is meant to compel her, and others, to voluntarily leave the country.[4] But "[i]mmigration detention cannot be motivated by a punitive purpose. Nor can it be motivated by the desire to deter others from speaking." *Mahdawi,* 2025 WL 1243135, at *11. As this Court recognized, "courts have not" previously "sanctioned the use of the immigration detention system to strike fear in or punish individuals," ECF 104 at 61, and this Court should not now condone such a practice.

[4] U.S. Department of State, *Secretary of State Marco Rubio Remarks to the Press* (Mar. 28, 2025), https://www.state.gov/secretary-of-state-marco-rubio-remarks-to-the-press-3/.

Finally, while flight risk and dangerousness can be legitimate immigration detention goals, there is absolutely no basis to conclude that either apply to Ms. Öztürk. The record is replete with declarations from nearly two dozen of Ms. Öztürk's supervisors, colleagues, and friends who all attest to her character and connectivity to the Tufts community. *See* ECF 82-2. Ms. Öztürk herself attests to a strong desire to be released specifically so that she can return to and remain at Tufts to complete her doctoral studies and rejoin her community. *See* Öztürk Decl., Exh 1-G, ¶¶ 63-88. What is more, Ms. Öztürk will have all of the necessary support and structure to be successfully released. Tufts has agreed to provide on-campus housing for Ms. Öztürk upon her return, and to make all of her awards, grants, and salary available. *See* Thomas Decl., Exh 1-E, ¶¶ 5-6. In addition, the Burlington Community Justice Center has offered to provide supervision, court reminders, connection to support, and reporting to the Court upon her release. *See* Penberthy Decl., Exh 1-F, ¶ 9.

"Where a detainee presents evidence that her detention, though discretionary, is motivated by unconstitutional purposes in violation of the Due Process Clause, the Court may reasonably conclude the same in the absence of countervailing evidence." ECF 104 at 62. Such is the case here, where, despite multiple opportunities, the government has not put any such evidence before this Court. *Cf. Mahdawi*, 2025 WL 1243135, at *1-2, 12-13 (finding no flight risk or danger).[5]

III. Ms. Öztürk's case presents extraordinary circumstances that render the grant of bail necessary to make the habeas remedy effective.

Ms. Öztürk has already put forth a robust demonstration that her case presents extraordinary circumstances that render the grant of bail necessary to make the habeas remedy

[5] Nor did the government offer any additional documents before the immigration judge that this Court could independently evaluate under its distinct *Mapp* analysis. *See* Khanbabai Decl., Exh. 1-D, ¶ 4.

effective. *See* ECF 82-1 at 15-21. That showing is further strengthened by the additional evidence attached to this supplemental filing, which goes directly to her medical condition that this Court recognized "will be a factor for the Court to consider when addressing the question of release." ECF 104 at 66-67.

"Asthma is a lung disease characterized by chronic inflammation of the airways" with symptoms including "shortness of breath, chest tightness, wheeze and cough" whose "outcome can be severe or even fatal if they are not addressed properly." McCannon Decl., Exh. 1-H, ¶ 5. Asthma symptoms can be triggered by a variety of factors, including stress, upper respiratory infections, and exposure to environmental factors like inhaled allergens or irritants. *See id.* ¶ 7. People living with asthma frequently "describe the experience of an asthma attack as feeling like they are suffocating." *Id.* ¶ 6. Treatments for asthma can include both maintenance and rescue inhalers, but these will have limited efficacy at alleviating worsening symptoms if an environmental factor caused the exacerbation and the person is unable to remove themselves from the trigger. *See id.* ¶¶ 8- 9. "It is somewhat akin to throwing a floatation device to someone in the ocean: it can help them stay afloat, but on its own it does not solve the dangerous situation." *Id.* If a person cannot avoid an environmental trigger for their asthma and only has access to their maintenance and rescue inhalers, "their asthma control may worsen to the point that they require nebulized bronchodilators, systemic oral treatment with steroids such as prednisone and/or evaluation and care in an emergency room, hospital or intensive care unit setting." *Id.* ¶ 10.

Ms. Öztürk was diagnosed with asthma in June 2023, with triggers including dust, stress, upper respiratory infections and strong odors from cleaning supplies, detergents, smoke and perfumes. *See id.* ¶¶ 16,18. After a severe asthma attack in July 2023 that coincided with a COVID-19 infection, Ms. Öztürk experienced approximately eight asthma attacks in the 20

months leading up to her arrest. *See* Öztürk Decl., Exh. 1-G, ¶ 5. She received her medical care from the Tufts Health Service, who "assessed her asthma to be well-managed overall while she was at Tufts" and in "good control with as-needed use of her prescribed inhalers." Caggiano Decl., Exh. 1-I, ¶¶ 11-12. In order to maintain this control, Ms. Öztürk "made very significant changes to [her] lifestyle so as to avoid triggers." Öztürk Decl., Exh. 1-6, ¶ 24. This included controlling her cleaning supplies, ensuring proper ventilation, avoiding strong smells and crowds, and frequently accessing fresh air. *See id.* ¶¶ 25-27.

This type of "avoidance and mitigation of environmental triggers is a key part of any treatment plan" for "patients whose asthma is exacerbated by inhaled allergens and irritants." McCannon Decl., Exh. 1-H, ¶ 23. It is also impossible to achieve in a detention center. Since Ms. Öztürk arrived in Louisiana, she has lived in a cramped indoor space with poor ventilation and 23 other women for almost all hours of the day; she is regularly exposed to cleaning products, shampoo, insect and rodent droppings and humidity, and almost never exposed to fresh air. *See id.* ¶ 27; Öztürk Decl., Exh. 1-G, ¶¶ 30-31. These conditions are having a meaningful, and unavoidable, impact. Over the past 39 days, Ms. Öztürk has had 8 asthma attacks as well as far more additional instances when she has had to use her rescue inhaler than she needed to in the past. *See* Öztürk Decl., Exh. 1-G, ¶¶ 5, 9. Whereas her attacks used to last between 5-15 minutes, they now can last up to 45 minutes, and "it has become progressively harder to recover from these asthma attacks while in detention." *Id.* ¶¶ 14-16. The "cumulative effect of these asthma attacks" have left Ms. Öztürk "exhausted and anxious." *Id.* ¶21.

These challenges have been compounded by the difficulty in receiving medical care at the detention center. *See id.* ¶¶ 34-53. Ms. Öztürk's experiences, "including a nurse forcibly removing [her] hijab against [her] consent, another nurse telling [her] an asthma attack was 'all in your head', another nurse saying to [her], 'you are giving me a headache,' and a doctor telling

[her] 'I cannot babysit you' when [she] tried to ask questions, have all led [her] to believe that many of the medical staff do not believe us or listen to us, and will not take appropriate care of us." *Id.* ¶39. Ms. Öztürk has also "experienced how long it can take to receive medical care, even when someone is in urgent stress," as it took almost an hour from the onset of her second asthma attack to being taken to the medical center. *Id.* ¶ 40. This is particularly concerning because "[r]espiratory status can deteriorate very rapidly in someone with asthma, and it can be life threatening if there is not a quick response." McCannon Decl., Exh. 1-H, ¶ 32.

Overall, Ms. Öztürk is "very concerned about the severity of these attacks," her "ability to manage them," and her inability to "receive appropriate care in detention." Öztürk Decl., Exh. 1-G, ¶¶ 18, 34. For good reason. According to two objective tests, Ms. Öztürk's asthma is currently poorly controlled. *See* McCannon Decl., Exh. 1-H, ¶¶ 12-14, 26. This represents a "significant change in her asthma condition." *Id.* ¶26. As Board Certified Pulmonologist Dr. Jessica McCannon explains:

> It is my opinion that the risk of Ms. Öztürk's condition worsening if she is not released from detention is fairly high. The reason for this risk is that she is experiencing ongoing, static exposure to triggers from which there is no respite. Under these circumstances, there is only so much that her maintenance inhaler and rescue inhaler can do. She is currently managing as best she can, but it is my opinion that Ms. Öztürk has a real risk of having an asthma exacerbation that would necessitate an urgent evaluation, nebulized medications, oral steroids and even possibly an emergency room visit.

Id. ¶ 28. She goes on to opine that "Ms. Özturk's condition will not improve if she remains in detention" and "[w]ithout release, she is at risk for progressive symptoms, worsening disease control, and adverse outcomes, including asthma exacerbation requiring acute medical attention which is not easily available to her, and even potentially fatal asthma exacerbation." *Id.* ¶ 34. This is the paradigmatic example of "extraordinary circumstances that justify release pending adjudication of habeas." *Coronel v. Decker*, 449 F. Supp. 3d 274, 289 (S.D.N.Y. 2020).

IV. This Court should not stay any order granting release pendente lite.

If the Court agrees that Ms. Öztürk raises substantial claims and extraordinary circumstances in support of bail, her release can admit no further delay. Federal Rule of Appellate Procedure 23(c) creates a presumption in favor of release pending the review of a release decision. *See Hilton v. Braunskill*, 481 U.S. 770, 774 (1987); *see also Mahdawi*, 2025 WL 1243135, at *13. In addition, courts evaluating whether to stay a civil ruling pending appeal must consider whether the party seeking a stay has shown (1) a strong likelihood of success, (2) irreparable injury, (3) injury to others, and (4) that the public interest favors reprieve from the court's order. *See Hilton*, 481 U.S. at 776. Each of these factors supports Ms. Öztürk's immediate release.

First, if the Court agrees that Ms. Öztürk's petition raises substantial claims, the government will necessarily be unable to meet its burden of showing a strong likelihood of success on the merits. *See Mahdawi*, 2025 WL 1243135, at *14. Second, the irreparable harm of continued detention falls solely on Ms. Öztürk. The government has not pointed to any legitimate harm, naming as its only "irreparable injury" "[a]ny time [it] is enjoined by a court [from] effectuating statutes enacted by representatives of its people." ECF 106 at 5 (quoting *Maryland v. King*, 567 U.S. 1301, 1303 (Roberts, C.J., in chambers) (cleaned up)). But that bears no weight in this measurement, for "[w]hile the executive branch assuredly has an interest in effectuating statutes enacted by the legislative branch, the judicial branch is charged with ensuring that the other branches do so in comport with the laws and the Constitution." ECF 109 at 4. On the other hand, "[t]he interest of the habeas petitioner in release pending appeal [is] always substantial," *Hilton,* 481 U.S. at 777, especially where there are First Amendment concerns. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976). Finally, these same First Amendment concerns indicate that immediate release is in the public interest because "continued detention would likely have a

chilling effect on protected speech, which is squarely against the public interest." *Mahdawi*, 2025 WL 1243135, at *14. There is no possible injury to other parties in this case, and Ms. Öztürk's release "will benefit [her] community, which appears to deeply cherish and value [her]." *Mahdawi*, 2025 WL 1243135, at *14; *see also* ECF No. 82-2 (22 declarations from Ms. Öztürk's professors, colleagues, and friends).

"Fortunately," as Justice Jackson wrote during height of the Red Scare, oppressive and lawless executive imprisonment "still is startling, in this country . . . ." *Shaugnessy v. United States ex rel. Mezei*, 345 U.S. 206, 218 (1953) (Jackson, J., dissenting). Ms. Öztürk has been detained for 39 days for co-authoring a student op-ed and her release will be delayed at least six additional days past this Court's initial transfer deadline. The conscience-shocking circumstances of this case demand her immediate release if this Court grants her bail request.

CONCLUSION

For the foregoing reasons, Ms. Öztürk's motion for release pendente lite should be granted.

Respectfully submitted,

/s/ Lia Ernst
Monica H. Allard
ACLU FOUNDATION OF VERMONT
PO Box 277
Montpelier, VT 05601
(802) 223-6304
lernst@acluvt.org
mallard@acluvt.org

Jessie J. Rossman*
Adriana Lafaille*
Rachel E. Davidson*
Julian Bava*
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF MASSACHUSETTS, INC.
One Center Plaza, Suite 850

Counsel for Petitioner
Dated: May 2, 2025

Boston, MA 02108
(617) 482-3170
jrossman@aclum.org
alafaille@aclum.org
rdavidson@aclum.org
jbava@aclum.org

Mahsa Khanbabai*
115 Main Street, Suite 1B
North Easton, MA 02356
(508) 297-2065
mahsa@mk-immigration.com

Brian Hauss*
Esha Bhandari*
Brett Max Kaufman*
Noor Zafar*
Sidra Mahfooz*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, Floor 18
New York, NY 10004
(212) 549-2500
bhauss@aclu.org
ebhandari@aclu.org
bkaufman@aclu.org
nzafar@aclu.org
smahfooz@aclu.org

Ramzi Kassem*
Naz Ahmad*
Mudassar Toppa*
CLEAR PROJECT
MAIN STREET LEGAL SERVICES, INC.
CUNY School of Law
2 Court Square
Long Island City, NY 11101
(718) 340-4558
ramzi.kassem@law.cuny.edu
naz.ahmad@law.cuny.edu
mudassar.toppa@law.cuny.edu

Matthew D. Brinckerhoff*
Katherine Rosenfeld*
Vasudha Talla*
Sonya Levitova*

EMERY CELLI BRINCKERHOFF ABADY WARD
& MAAZEL LLP
One Rockefeller Plaza, 8th Floor
New York, NY 10020
212-763-5000
mbrinckerhoff@ecbawm.com
krosenfeld@ecbawm.com
vtalla@ecbawm.com
slevitova@ecbawm.com

Admitted to appear pro hac vice

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Exhibit 1-B: Declaration of Dahlia French

Exhibit 1-C: Declaration of Elizabeth Goss

Exhibit 1-D: Declaration of Mahsa Khanbabai

Exhibit 1-E: Declaration of Ayanna Thomas

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DECLARATION OF ATTORNEY JULIAN BAVA SUBMITTED IN SUPPORT OF PETITIONER'S SUPPLEMENTAL MEMORANDUM OF LAW IN FURTHER SUPPORT OF RELEASE UNDER *MAPP V. RENO*

I, Julian Bava, declare under penalty of perjury that the following is true and correct to the best of my knowledge and belief:

1. I am an attorney for Rümeysa Öztürk.

2. Attached as Exhibit 1-A is a true and correct copy of the transcript of proceedings held on March 4, 2021 in *Castillo-Maradiaga v. Decker*, 12-cv-842 (S.D.N.Y. Mar. 4, 2021).

3. Attached as Exhibit 1-B is a true and correct copy of a declaration by Dahlia French dated May 2, 2025.

4. Attached as Exhibit 1-C is a true and correct copy of a declaration by Elizabeth Goss dated May 2, 2025.

5. Attached as Exhibit 1-D is a true and correct copy of a declaration by Mahsa Khanbabai dated May 2, 2025.

6. Attached as Exhibit 1-E is a true and correct copy of a declaration by Ayanna Thomas dated May 1, 2025.

7. Attached as Exhibit 1-F is a true and correct copy of a declaration by Becky Penberthy dated May 1, 2025.

8. Attached as Exhibit 1-G is a true and correct copy of a declaration by Rümeysa Öztürk dated May 2, 2025.

9. Attached as Exhibit 1-H is a true and correct copy of a declaration by Jessica McCannon dated May 2, 2025, and her curriculum vitae.

10. Attached as Exhibit 1-I is a true and correct copy of a declaration by Marie Caggiano dated May 1, 2025.

* * *

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on May 2, 2025 in Boston, Massachusetts.

/s / Julian Bava
Julian Bava

EXHIBIT 1-A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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JAVIER CASTILLO MARADIAGA,

Plaintiff,

v. 21 CV 842 (KPF)

THOMAS DECKER, *et al.*,

Defendants. Decision
(via Microsoft Teams)
----------x

New York, N.Y.
March 4, 2021
4:05 p.m.

Before:

HON. KATHERINE POLK FAILLA,

District Judge

APPEARANCES

ALINA DAS
PAIGE AUSTIN
Attorneys for Plaintiff

AUDREY STRAUSS
United States Attorney for the
Southern District of New York
REBECCA FRIEDMAN
Assistant United States Attorney

(Case called)

MS. AUSTIN: Good afternoon, your Honor, Paige Austin from Make the Road New York, and I am joined by my cocounsel, Alina Das, from the immigrants rights clinic at the New York University School of Law, also on behalf of petitioner.

THE COURT: Thank you, and good afternoon to you both.

Ms. Friedman representing the government.

MS. FRIEDMAN: Yes. Rebecca Friedman, your Honor, representing the government.

THE COURT: Thank you as well. Thank you for participating, especially given the lateness of the hour.

I do have a decision. It is an oral decision. And as a result of that, I would show you, but there are a lot of highlights and circles and arrows and it may not be the best prose, but it is, I believe, what is the best result in this case. Before I render that decision there are a few questions that I wanted to ask you about recent developments.

Ms. Austin, I'll ask you, and you'll defer to Ms. Das if it is appropriate.

There was a hearing that occurred on Tuesday regarding a possible bond application. The application was denied. Because it's an area with which I am unfamiliar, this Third Circuit convention, when there is such a hearing, are there actually conditions that are proposed or does the immigration judge, or whomever, agree to the concept of a bond and let the

parties figure out what is an appropriate level?

MS. AUSTIN: That is a good question, your Honor, and I think could be answered in two ways. The first is what the immigration judge would have the authority to do and the second is what he did in this case.

We certainly think that the immigration judge does have the authority to set conditions. However, that is a matter of some disputed practice in the immigration court and I do not believe, and my cocounsel, Ms. Das, can correct me if I am wrong, but I do not believe in this case the immigration judge considered any alternatives to detention or any conditions of release apart from a monetary bond.

THE COURT: I see. What is apparently not an analogue, which is the criminal setting that I face, it is often the case that when a bail package or bail argument is had, there is a proposal from which one begins. It is not just the idea of bail, no bail. The defendant's counsel will propose terms of bail that they submit meet the requirements of the Bail Reform Act.

Here, are you saying to me that the IJ could have got to that point but did not in fact get to that point and, therefore, there never were conditions discussed?

MS. AUSTIN: I can certainly represent that there were no conditions discussed and that that is something, you know, that could be considered. So I think that your Honor is right,

but I do want to give my cocounsel an opportunity to weigh in here if she has a different view on the matter.

THE COURT: Ms. Das.

MS. DAS: Yes, your Honor. My cocounsel is right.

I just would underscore that in this particular instance many immigration judges believe that they don't have the power to consider alternatives to detention, such as electronic monitoring or other conditions, in addition to a monetary bond, and that this judge in particular has taken that position in the past, which is why we assume he did not consider it here. That issue has been litigated in other cases.

So, for example, in the case that we cited in our most recent letter today, the *Uzmande* case, this judge in particular was faulted for not having considered alternatives to detention as part of his analysis in a Guerrero-Sanchez bond hearing. It is an issue of dispute, and I think that is one of the reasons why we have these administrative bond hearings. This was a far cry from the type of constitutionally adequate bond hearing process that our clients often seek.

THE COURT: I am going to hear from Ms. Friedman in a moment on this topic.

But before I do, Ms. Austin, you did send me the letter. Each of you has sent me a number of letters. I commit to you that I've read them.

But what is it that you would like me to deduce from the letter regarding the bail hearing? I intuit that one of the things you want me to understand is, he's not been released on bail, *Mapp* relief would be really nice. But I want to understand what, if anything, you are asking me to understand from that bail application and its failure.

Ms. Friedman, to the extent there is something you want me to understand from what happened at that hearing, you will let me know.

Ms. Austin.

MS. AUSTIN: Thank you, your Honor. We did send you two -- we filed two letters since that hearing took place. The first was simply to apprise the Court that he had not been released and the *Mapp* claim for that reason does remain live. It was not mooted out by the outcome of that hearing.

We went on to respond to the government with I think some additional important takeaways from our perspective.

First, of course, the bond hearing and indeed the *Mapp* requests have no bearing on the primary forms of relief at issue here, namely, the stay that Mr. Castillo seeks for the duration of his petition.

Second, we wanted to make the point that he does continue to seek, as a secondary form of relief, release on *Mapp* for the duration of this petition, and that is analyzed under a different standard and, obviously, by your Honor, a

different court, than the bond hearing analysis that occurs in the administrative proceedings.

Our position is that it really does not have any bearing on the *Mapp* analysis, but we did want to make that point to your Honor and also to underscore some of the issues that arose in the bond hearing in our most recent letter, again, not because we are seeking review of that bond hearing before this Court or, you know, essentially seeking, for example, an appeal through this court.

We submitted those points for your Honor only in response to what he understood to be the government's suggestion that this might in some way bear on Mr. Castillo's claims to relief. Our position here is that it does not, though, of course, it is relevant inasmuch as the issue of release under *Mapp* remains before your Honor.

THE COURT: Thank you.

Ms. Friedman, just following on what Ms. Austin was saying, are you making arguments to me today regarding the instant motion for a preliminary injunction based on what happened at that hearing on Tuesday?

MS. FRIEDMAN: No, your Honor.

THE COURT: That's the answer. I didn't want to cut you off if there was something you wanted to add.

MS. FRIEDMAN: No. I would just like to answer the question that your Honor had posed to the petitioner.

THE COURT: Yes.

MS. FRIEDMAN: The IJ in this case found that ICE had met their burden of finding that petitioner is a danger to the community. And based on that fact, he did not need to go into any other alternatives.

THE COURT: Thank you.

Ms. Friedman, you are doing very well. Your answers are leading to my follow-up questions.

You've advised me about the charges that were brought by the district attorney and that were later dismissed and the reasons why they were dismissed.

If you know, are you suggesting to me that if I were to let Mr. Castillo out on *Mapp* release that the DA's office would reinstate the charges? I ask this not knowing whether they have an inclination to do so, whether they have the ability to do so. But I did not know if one of your reasons for sending me that letter was to let me know that *Mapp* release would be futile because he would just get picked up by the DA's office anyway.

MS. FRIEDMAN: I have no knowledge of what the DA's office plan would be if he were to be released.

THE COURT: Thank you.

You heard me ask Ms. Austin what I am to intuit from her letter. I ask you the same. What do you want me to know as I make this decision on the motion for a preliminary

injunction regarding the fact of his arrest and what you now understand to be the reasons why the charges were dropped?

MS. FRIEDMAN: Sure. In the oral argument I talked a lot about the factors that the field office director and the ombudsman considered, the criminal charges, the backgrounds. So this was part of the information that was considered, this type of criminal charges. The information that was in front of the IJ was also information that ICE was aware of as well.

THE COURT: I see.

Thank you.

I hesitate to ask this question of each side and yet I will. I have been receiving daily letters from everybody. Do I have everything? The most recent letter that I received was the petitioner's letter in response to the government's letter and that was received a few hours ago.

Ms. Austin, is there something else from you that I should know about? Because I don't want to decide this without having all the documents with me.

MS. AUSTIN: No, your Honor. It is a fast-moving case. It is a case in which there are requests, you know, being made to ICE and, obviously, now potentially an appeal in the bond hearing. So, as you have observed, I think our ability to update you on the underlying events in the case is basically limitless. But I think you have before you at this point the crucial information for the purposes of this motion.

THE COURT: Thank you.

Ms. Friedman, is there additional information or letters that you have sent me that I didn't know to look for before signing on to this conference?

MS. FRIEDMAN: No, there is nothing else for the government. The government believes that all of the issues have been well aired in the briefing, in oral argument, and the subsequent letters.

THE COURT: I will go with thoroughly. I will decide whether thoroughly and well equate in a moment.

Give me a moment, please, to look at my notes and make sure I don't need to add anything based on the conversation I've just had with you.

This will be an oral decision. It won't be a short one, although I'll try. If you are not sitting down, please sit down and make yourself comfortable for this.

I'm also going to ask you to excuse me in advance because it is more important to me that I properly deliver my decision and less important to me that I make eye contact with you as I'm doing so. If I end up staring down for the next 20 or so or more minutes, take no offense, please. Just excuse me while I make sure I don't have to add anything.

I will begin.

Let me begin by thanking you each of you, and the three of you have done so much work on this, for the work that

you've done on a compressed schedule on these very significant issues. I was thanking the government for providing me up-to-date information regarding the dates before which Mr. Castillo would not be deported. I also want to thank both sides for providing me updated information about matters that have developed in the other proceedings in the case.

I recognize, under the schedule most recently submitted to me by the government, that I still have time to think about this. But I will be painfully candid with you. I have thought about little else but this case for the past couple of days, and I've come to the point of realizing that additional days are not going to provide me greater clarity.

That is because -- and I can say this, and you don't have to agree with me, but maybe quietly you do -- this case implicates a number of legal issues for which there is no clear guidance from the Supreme Court or the Second Circuit. I have done my best to be faithful to the law, but as you will see, there are issues I've identified as to which the relevant precedents are in conflict, and there are issues as to the which the relevant precedents hint at but do not supply an answer.

It is the rare district judge who looks forward to being appealed. I am not that judge. There are reasons for me to hope that I am not appealed here. But if I am, a possible good that can come from this case, and from that appeal, is the

clarity that each of the participants to this litigation, including myself, deserve on these knotty jurisdictional, constitutional, and statutory issues.

For reasons that I will now explain, I am granting petitioner's motion for preliminary injunctive relief, in the form of staying his removal from this country so that he can pursue his motion to reopen the case with the BIA and, potentially, a petition for review with the Second Circuit and so he can apply for renewal of his DACA eligibility.

On that latter point, because of the policy identified by the parties that forecloses consideration of such renewal while petitioner is detained, I am granting relief pursuant to *Mapp v. Reno* to this extent. I will release Mr. Castillo on a bond so that he can seek DACA renewal. And it may be that this release permits him to address other aspects of his immigration litigation more easily. But it is the DACA renewal that, to me, necessitates his release under *Mapp*.

If his DACA renewal request is denied, and if he runs through his appeal process or if that appeal process does not require him not to be detained, I will listen to the government if they then move again for his redetention. My point is, he's out because you've told me that he can't apply for DACA renewal while he's out. If that matter comes to its resolution, then I will reconsider as appropriate.

I will speak only very briefly about the factual

background because each of you is intimately familiar with it. The petitioner came from Honduras at age 7 in approximately 2002. His parents were here under a temporary protected status for which he is not eligible. He has been subject to a final removal order since 2004. He did have DACA status from 2012 to 2019 but did not thereafter review. He was detained by the NYPD in December of 2019 and turned over to ICE, I am told, in violation of local detainer law and held in ICE custody since then. There was a motion to reopen the removal proceedings that was denied by the immigration judge in January 2020. The BIA dismissed the appeal in October 2020, and there was no appeal to the Second Circuit.

He is currently held at the Hudson County Correctional Center in New Jersey. There was a motion to reopen removal proceedings pending before BIA since January 28 of 2021. It claims, among other things, ineffective assistance of counsel in the prior motion-to-reopen proceedings. The BIA has not decided the motion to reopen, but they have denied the stay of removal. This habeas petition was filed on January 29 of 2021. Since then, ICE has denied requests for release from custody pending resolution of the motion to reconsider or to reopen.

There are four claims brought in the habeas petition. The first is a violation of constitutional, statutory, and regulatory rights to adjudication of the motion to reconsider and to reopen removal proceedings for persecution-based claims.

There is a claim of violation of constitutional and statutory rights adjudication of the parole request and DACA protection.

There is a claim of violation of agency policy protecting petitioner from imminent deportation. It is a claimed violation of the Administrative Procedure Act. And there is a request for release pending adjudication, pursuant to *Mapp v. Reno*.

The instance preliminary injunction motion seeks an injunction of removal, a stay of removal pending adjudication of the habeas petition, as well as release on bail under *Mapp*. The government has asked for denial of petition on the merits and denial of the preliminary injunction motion as mooted by the denial of the petition on the merits.

I am going to begin by speaking of the preliminary injunction standards. I would say that's the parties' first dispute. I guess that's the first dispute that's coming up in the resolution of this motion.

The government is arguing for the strictest standard, which requires a showing of clear or substantial likelihood of success on the merits. This is based on the theory that the relief the petitioner seeks would either alter the status quo or provide the ultimate relief sought in the petition.

I just want to pause and recognize that I know the government actually wishes that I dispense with this motion

entirely, acknowledge that I lack jurisdiction to consider the petitioner's claims, and separately lack venue for his fourth claim, and deny and dismiss the habeas petition. But as I'm about to explain, I'm not prepared to do that on this record, where petitioner has claimed to be mounting only noncore claims, and I will instead consider the petitioner's motion.

The petitioner himself is arguing for a lower standard, which requires a showing of a likelihood of success on the merits, or a serious question going to the merits to make them a fair ground for trial, with the balance of hardships tipping decidedly in petitioner's favor. Ultimately, I'm adopting the serious-questions standard, but I want to explain to you how I get there because it wasn't evident to me and it may not be evident to you.

To begin, I don't believe that petitioner is seeking a mandatory injunction, but rather a prohibitory injunction. The difference being that the prohibitory injunctions maintain the status quo and the mandatory injunctions alter it. There are many cases for this proposition. Just one is *North American Soccer League, LLC v. U.S. Soccer Federation*, 883 F.3d 32, a Second Circuit decision from 2018, citing *Tom Doherty Associates, Inc. v. Saban Entertainment, Inc.*, 60 F.3d 27, a Second Circuit decision from 1995.

It is true that a mandatory preliminary injunction, because it alters the status quo, requires the movant to meet a

heightened standard of a clear or substantial likelihood of success on the merits and a strong showing of irreparable harm. I'm quoting there from *People ex. rel. Schneiderman v. Actavis PLC*, a Second Circuit decision from 2015 reported at 787 F.3d 638.

But the statute quo, as I understand it, is often defined as the last actual, peaceable uncontested status which preceded the pending controversy. And that is from *Mastrio v. Sebelius*, 768 F.3d 116, a Second Circuit decision from 2014. My understanding, therefore, of the status quo, as this is defined, is the situation in which petitioner was neither detained nor subject to removal.

It is true as well that a heightened standard has also been required where an injunction will provide the movant with substantially all the relief sought and that relief cannot be undone even if defendant prevails at a trial on the merits. That is the *Doherty* case I mentioned a few moments ago. It is echoed as well in *Yang v. Kosinski*, 960 F.3d 119, a Second Circuit decision from 2020.

I think one can fairly argue that granting petitioner's application for injunctive relief would provide him with substantially all of the relief he seeks in the petition. I find that the second prong is not met because if the government prevails, the petitioner can be redetained and can be placed back in removal proceedings.

The more complicated issues stem from the fact that the petitioner is challenging government action. It is ordinarily the case in the preliminary injunction setting that a preliminary injunction can be granted where a party establishes either that it is likely to succeed on the merits or that there are sufficiently serious questions going to the merits to make them a fair ground for litigation, with the balance of hardships tipping decidedly in favor of the moving party. There I'm citing to *Otokoyama Co. Ltd. v. Wine of Japan Import, Inc.*, 175 F.3d 266.

However, "when a preliminary injunction will affect government action taken in the public interest pursuant to a statutory or regulatory scheme, the moving party must demonstrate irreparable harm absent injunctive relief, a likelihood of success on the merits, and public interest weighing in favor of granting the injunction." I am quoting there from *Agudath Israel of America v. Cuomo*, 983 F.3d 620, a Second Circuit decision from 2020. Similar sentiments are in the cases of *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 from 2008, and *New York v. United States Department of Homeland Security*, 969 F.3d 42, a Second Circuit decision from 2020. And in this setting the substantial questions or the serious questions standard ought not be used.

I wanted to understand the parameters of this particular body of law. So I did what I will colloquially

describe as a deep dive into these cases, going back to *Medical Society of the State of New York v. Toia* from 1977, and *Hamilton Watch Co. v. Benrus Watch Company* from 1953. What I've learned is that the standard is often cited, but it is not always followed and not followed with perfect consistency. That particular fact was discussed by the Second Circuit in the case of *Trump v. Deutsche Bank AG*, 943 F.3d 627. I recognize that the case was reversed by the Supreme Court, but on other grounds.

The Court there examined what it termed the government action exception to the use of the serious-questions standard. In its discussion it recognized that, despite repeated citations to the more restrictive standard, the Court had in two decisions affirmed preliminary injunctions against government action issued using the less rigorous serious-questions standard. Those two cases were *Haitian Centers Council, Inc. v. McNary*, 969 F.2d 1326, a Second Circuit decision from 1992, enjoining the INS, and *Mitchell v. Cuomo*, 748 F.2d 804, a Second Circuit decision from 1984, enjoining state prison officials.

Also in the Trump decision, the Second Circuit acknowledged that it had sometimes affirmed decisions that issued or denied preliminary injunctions against government action using both standards.

As it happened, the *Trump* court ultimately adopted the

more rigorous likelihood-of-success standard to the challenges to subpoenas issued by a congressional committee, but then it ended up deciding the matter under both standards. It's the Court's discussion of competing public interests that informs my decision here.

The Court discussed the *Haitian Centers* case and then the original case on which it relied, which was *Plaza Health Laboratories v. Perales* from 1989. And what it concluded was that *Haitian Centers* had found that no party had an exclusive claim on the public interest. It is actually a quote from the *Haitian Centers* case. And that point later influenced, it appeared, in the Court's decision in *Time Warner Cable of New York City LP v. Bloomberg L.P.*, where the Court found, in noting that there were public interest concerns on both sides of the litigation, they found that the serious-questions standard would be applicable even though the case was ultimately decided under the likelihood-of-success standard.

Here, in this case as well, I have identified and the parties have identified for me public-interest concerns on both sides. I recognize that petitioner is challenging a statutory framework that was implemented with due regard for the executive branch's primacy in immigration matters. But the record reflects competing governmental interests at a federal level, and strong countervailing governmental interests at the state and local level.

First, I note that this dispute is taking place against the backdrop of a change in administration and a consequent reconsideration of federal immigration policies. That includes the DACA program as to which petitioner seeks renewal, and the policy that forecloses his renewal while he is detained. I recognize -- I want to make clear that I recognize that DACA status is not an entitlement.

But the current administration has recognized that the DACA program is a government priority and the government's prioritization of that program is itself a strong countervailing Federal Government action in the public interest.

Petitioner was formerly eligible, and might be eligible still, and, thus, there is a countervailing interest in allowing petitioner to pursue this program. I am not in this regard bound by respondent's decision not to grant petitioner parole to pursue the program. It remains a priority for the new administration.

Additionally, although respondent argues that petitioner is challenging government action taken in the public interest, the petitioner has pointed to developments that complicate this picture.

At oral argument petitioner highlighted three governmental actions that suggested that there are more complicated, more nuanced public interest concerns than

petitioner's removal pursuant to the INA. And these include the January 20 executive order and memo, the February 2 executive order, and the February 18 memo.

The January 20 memorandum, for example, demonstrates that the government prioritized a moratorium on deportations, and the petitioner would fall within that moratorium. The government maintains that petitioner is not entitled to relief under any of these memos or executive orders or policies.

But, more generally, these statements suggest that this is not simply a case where the government's sole interest is removing people pursuant to the INA. Rather, the government has expressed an interest in implementing the INA in a certain way by establishing enforcement priorities, and petitioner is challenging the application of the government's stated priorities to his case.

While petitioner may not be entitled to an order directing the government to prioritize exercise of its enforcement discretion in a particular way, these statements of the government's enforcement priorities suggest that a more nuanced view of government action in the public interest, with that phrase in quotes, is warranted than is asserted by respondents and reinforce that there are public-interest issues on both sides.

Second, and separately, New York City and the State of New York have articulated strong countervailing interests in

petitioner's favor. Petitioner has received a letter from the Law Department of the City of New York, relating that petitioner had been turned over to ICE in violation of the City's detainer law. And New York State has publicly expressed a strong public interest against the removal of individuals like petitioner, for example, in its amicus brief in the Texas litigation, mirroring the Federal Government's own priorities, as articulated in the January 20 memo and the executive order.

The *Trump* court noted, and the cases it cited were the *Time Warner* case and the *Hatian Centers* case, that where there are public-interest concerns on both sides of the litigation, the serious-questions standard would be applicable. And for these reasons, and on what I believe to be the rather unique facts of this case, I am using the serious-question standard.

And what I'll do now is to explain why I find why that there are substantial or serious questions regarding my own jurisdiction to hear this case and regarding petitioner's due process issues.

I will note, in the issue of jurisdiction and other sort of opening issues, I don't believe the venue issues are an issue in this case. I do have my view regarding core and noncore claims, and that was set forth in the case of *Gomez v. Decker*, but I also agree that noncore claims can be brought in a legal custodian district, such as the Southern District of New York, and I've been advised that petitioner is arguing only

noncore claims here, so I don't find a venue problem.

The larger issue for me is the issue identified by respondent about whether I have jurisdiction to review petitioner's claims. For that I turn to Section 1252 of Title 8 of the United States Code, which is the section of the INA that covers judicial review of removal orders. I'm also looking at the amendments over time and the court cases interpreting it.

After doing that, I conclude that there are substantial or serious questions that both prevent me from dismissing the petition outright and that satisfy the serious-questions prong of the preliminary injunction standard.

Beginning at the beginning with the Real ID Act, in 2005, after the Supreme Court's decision in *INS v. St. Cyr*, Congress amended the statute to expressly include habeas review under 2241 in the forms of prohibited judicial review of removal orders, thereby superseding that portion of *St. Cyr*. And Section 1252(a)(5) provides, in essence, for a pipeline that begins with the immigration judge, goes next to the BIA, and next to the Court of Appeals.

The Second Circuit has construed this provision broadly to preclude district courts from exercising subject matter jurisdiction over an action that even indirectly challenges an order of removal. As one case for that proposition I cite *Delgado v. Quarantillo*, 643 F.3d 52, 55, a

per curiam Second Circuit decision from 2011.

But the parties have focused on 1252(g). I won't read all of it into the record, because the parties are so familiar with it, but in large measure the focus is on this part. No court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

The intended effect of this provision is to strip district courts of jurisdiction, to hear removal order-related claims that ought to be funneled through the BIA to the circuit court, in accordance with subsection (a)(5).

The issue, however, is that the Supreme Court itself has said that the language in 1252(g) does not sweep in any claim that can technically be said to arise from the three listed actions of the Attorney General. Instead, we read the language to refer just to those three specific actions themselves: Commencing proceedings, adjudicating cases, and executing removal orders. That is from the Supreme Court's decision in *Jennings v. Rodriguez*, 138 S. Ct. 830 from 2018, and it, in turn, is relying on a case cited to me by the parties, *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 from 1999.

So the issue and the question before us is whether a suit brought against immigration authorities is or amounts to a

challenge to a removal order. Many courts have found in this district that it is not per se a challenge to a removal order, and whether it is or not turns on the substance of the relief that plaintiff seeks. One of many cases for that proposition, *Vidhja v. Whitaker*, 2019 WL 1090369.

The *Vidhja* case notes, and it is true, that numerous courts in this circuit have held that a request for a stay of removal constitutes a challenge to a removal order, and that, accordingly, district courts lack jurisdiction to grant such relief. But other cases have found that subsection (g) doesn't preclude jurisdiction under certain circumstances, including the *You* case, 321 F.Supp. 3d 451, or *Calderon v. Sessions*, 330 F.Supp. 3d 954.

Of the courts that have decided that 1252(g) does not strip jurisdiction to hear habeas petitions under certain circumstances, some have read the provision not to apply to challenges to the legal authority to remove in a general or in a particular way, and others have acknowledged that the provision might apply to nondiscretionary decisions, but must be read not to apply, so as to avoid constitutional problems. The *S.N.C.* decision that we have discussed at oral argument and the *Siahaan* decision that we discussed at oral argument also speak to these issues.

Related or interrelated with this question of the scope or interpretation of 1252(g) is the issue of reading

1252(g), as respondents request that I do, would run afoul of the suspension clause. And in that regard I have considered the principal Supreme Court cases on the issue, as well as the most recent Court of Appeals decision.

We begin with *INS v. St. Cyr*, which I mentioned earlier. However, that case was, as noted, superseded by the Real ID Act. It noted in that case, and this has consequences for later analysis that, at the absolute minimum, the suspension clause protects the writ as it existed in 1789.

After *St. Cyr*, there was *Boumediene v. Bush*. I know it was not an immigration case, but it was nonetheless significant in that it listed requirements or gave ideas and guidance on requirements for adequate and effective substitutes in lieu of habeas, which were designed to avoid suspension clause problems, and it discussed minimum criteria for substitute procedures.

And then, most recently, we have had *Department of Homeland Security v. Thuraissigiam* from last year, and it's the case on which the parties have focused the most. It was an immigration case. It concerned the availability of habeas relief to challenge expedited removal orders, where the applicable jurisdiction-stripping provision was Section 1252(e).

In that case, however, again, the focus was on Founding Era precedent. Justice Alito, writing for the Court,

claimed that the petitioner had so conceded. I actually went back, and I don't think that was the case, but that is what he found.

It doesn't purport to decide whether the scope of the habeas writ has expanded since the Founding Era. It does suggest that the suspension clause only applies to core habeas claims, as understood at the Founding Era, and it summarily dismissed due process arguments, asserting that petitioner had no due process rights because he was effectively stopped at the border.

There are differences though. Let me say this. I recognize that there is language in *Thuraissigiam* that would seem to doom petitioner's claims. There is language, for example, that the relief sought might fit an injunction or writ of mandamus, but falls outside the scope of the common law habeas writ.

But here, unlike in *Thuraissigiam*, Mr. Castillo, the petitioner, is not asking this Court either for vacatur of his removal order or for a directive of any kind to the BIA. Rather, he's seeking merely to be permitted to remain in this country while his motion to reopen proceeds through the BIA and possibly to the Second Circuit.

That said, it seems to me that his request for the Court to direct ICE to follow parole request procedures would seem to fall within the scope of that paragraph or that

language in *Thuraissigiam*.

Thuraissigiam also noted that simply releasing Mr. Thuraissigiam would not provide the right to stay in the country that his petition ultimately seeks. Without a change in status, he would remain subject to arrest, detention, and removal.

But here, by comparison, releasing Mr. Castillo would give him the chance to pursue DACA relief and would make his opportunity to obtain relief through the motion-to-review and the petition-for-review process considerably more meaningful.

I have looked at other cases, both pre and post *Thuraissigiam*. Justice Alito speaks of the case of *Heikkila v. Barber*, 345 U.S. 229 from 1953. That case itself assumes that the constitutional scope of the writ covers collateral attacks on deportation orders. I think Justice Alito may have misspoken or misperceived that in the *Thuraissigiam* decision, but I leave that for someone else to ultimately determine.

There are also cases, pre and post *Thuraissigiam*, discussing whether the motion to reopen proceeding is an adequate and effective substitute. What is interesting to me is that in several of these cases they have distinguished their case from situations in which the petitioner not only could not be removed before the motion was adjudicated, but also had a credible fear of persecution or torture in the country of removal, such that he may not have an opportunity to file or

have adjudicated a postremoval motion to reopen. I am quoting here from the case of *Barros Anguisaca v. Decker*, 393 F.Supp. 3d. This pinpoint cite is at 352, and it lists a series of cases. I do think that this case before me is and fits within those circumstances.

The *Joshua M. v. Barr* case from the Eastern District of Virginia, the *Siahaan* case that I mentioned earlier, were cases in which district courts had concluded that threats of physical injury within a country of removal undermined the ability to effectively prosecute claims before the BIA and to bring a petition for review to a circuit court from the removed country and, therefore, made the process an inadequate substitute for habeas relief.

I will just note in that regard as well that the Sixth Circuit's decision in *Hamama v. Adducci*, in particular, the dissenting opinion of Judge White noted that protection against the executive action of removal is within the recognized scope of habeas, and the petition for review procedure provides an inadequate substitute for habeas under the circumstances presented here, which are akin to the ones in this case. And the district court, therefore, properly exercised jurisdiction over that claim.

Looking at those cases, they still left open the possibility that there were situations in which either 1252(g) ought not apply or, if it did apply, there would be suspension

clause issues for which there was not an adequate and effective substitute.

I recognize that post-*Thuraissigiam* the circuit courts that have decided the issue have not found suspension clause issues. But with appropriate respect to those circuits, I found that the reasoning didn't engage fully with the issues that the parties have brought to my attention in this case, and so I note them. But it doesn't detract from my ultimate conclusion that there is a substantial or serious question on the issue.

These cases include *Gicharu v. Carr* from the First Circuit, reported at 983 F.3d 13; *EFL v. Prim*, the very recent decision from the Second Circuit contained at 2021 WL 244606; and *Tazu v. Attorney General*, 975 F.3d 292, a Third Circuit decision from 2020.

Tazu, in particular, I find not persuasive because having told me that there is no problem and there are no due process issues, it then ends by saying, and I quote, "fortunately, his removal is already stayed before the Second Circuit. We trust that he will be able to stay here with his family while he seeks relief." As precedent, that helps me not at all.

Ultimately, and I thank you for your indulgence as I went through that case law, I find substantial questions regarding whether 1252(g) strips me of jurisdiction, and if so,

whether such jurisdiction stripping would violate the suspension clause.

To begin, I find that the courts' disparate constructions of the scope of 1252(g) itself both prevents me from concluding that I lack jurisdiction and raises a substantial question as to whether the bar even applies in this case. The plain text of the statute would seem to cover a broad range of proceedings. But the Supreme Court in *Jennings* instructed courts to read the provision narrowly and not literally. How narrowly is an open question that has led courts to differing conclusions, often influenced, whether expressly acknowledged or not, by the canon of constitutional avoidance, and I cannot say with certainty that that statute operates to strip me of jurisdiction.

If I did, I would proceed to the next level of substantial or serious questions, addressing suspension clause issues, and this conclusion proceeds from two findings: (i) there is support in the case law for holding that the writ has evolved since 1789 and extends to this situation, such that the suspension clause would apply; and (ii) the statutory channeling of claims from the immigration judge, to the BIA, to the circuit Court of Appeals, is an inadequate substitute for habeas on the facts of this case.

Let me speak first about the support in the case law. The cases that I mentioned from the Supreme Court, *St. Cyr*,

Boumediene, and even *Thuraissigiam*, acknowledged, through use of their "at a minimum" language, that the Court was discussing the writ as existed in 1789. But this repeated use of qualifying language suggests that the writ is or could be broader than what had been outlined in those decisions. The *Heikkila* Supreme Court decision and the *Hamama* dissent, to which I referred above, presented evidence from the founding period and beyond regarding a broader conception of the writ to which the suspension clause would apply.

On the issue of what qualifies as an adequate and effective substitute, I'm drawing my instruction from the Second Circuit's decision in *Luna v. Holder*, and there are several factors that are called to my attention.

One is that the purpose and effect of the substitute was to expedite consideration of the detainee's claims and not to delay or frustrate it. One is that the scope of the substitute procedure ought not be subject to manipulation by the government. Third, a mechanism for review that is wholly a discretionary one is an insufficient replacement for habeas. And, fourth, the entity substituting for a habeas court must have adequate authority to formulate and issue appropriate orders for relief, including the power to order the conditional release of an individual unlawfully detained.

The petitioner has argued here that the existing statutory scheme does not satisfy these requirements, at least

on the facts of this case. I conclude that these arguments raise a substantial question regarding my jurisdiction and regarding the constitutional problems that would adhere if Section 1252(g) were found to bar jurisdiction here.

The BIA handling of stay-of-removal requests is, it has been submitted to me, opaque and rushed. It is unclear what the standards are for granting or denying a stay, and it is argued that it yields arbitrary results. I have also been presented with an amicus brief in the *Ixcoy Caal v. Decker* case making that point as well.

Another complaint is that the stay request and the motion to reopen are not handled together, creating what at least one court has called a jurisdictional no man's land.

A third challenge is that the petitioner is likely to be removed before he has the chance to petition the Second Circuit for a stay, thereby undermining the effectiveness of the alternative process. It doesn't provide relief from the underlying executive action, which is removing him to a country where, petitioner alleges, he faces a risk of persecution and violence.

For these reasons, I am finding substantial questions dealing with 1252(g) itself. I am also finding substantial questions regarding the procedural due process to which petitioner is entitled.

Now, petitioner argues that he has a right under the

Fifth Amendment due process clause, to adjudication of his motion to reopen and his parole request before he is removed. Many of the arguments are ones I have just repeated, that it is unlawful to deport people before they have had a full and fair opportunity for review particularly in the asylum and CAT context, the jurisdictional no man's land argument, and that the ability to get a stay of removal from an IJ or the BIA is inadequate to protect one's rights because the process results in arbitrary and capricious decisions and no ability to appeal a stay of the denial to the circuit court before a final decision on the motion to reopen.

Ultimately, I do conclude that these do raise serious or substantial questions regarding the due process rights.

The Fifth Amendment's due process clause mandates that no person shall be deprived of liberty without due process of law. This clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent. I am quoting here from *Zadvydas v. Davis*, 533 U.S. 678, a Supreme Court decision from 2001, and *Thuraissigiam* itself confirms that aliens who have established connections in this country have due process rights in deportation proceedings.

The next issue, therefore, is whether there is a cognizable liberty or property interest. Petitioner has suggested to me that there are. He has cited a liberty

interest in remaining in the United States, a statutory right to move to reopen his proceedings, and an entitlement under law to not be deported to a country where persecution would occur.

The fundamental requirement of dues process is the opportunity to be heard at a meaningful time and in a meaningful manner. I quote there from *Mathews v. Eldridge*, 424 U.S. 319 from 1976.

The adequacy of these procedures is a function, in part, of the magnitude of the interest at stake and the likelihood of erroneous deprivation.

In the Second Circuit's decision in *Hechavarria v. Sessions*, the Court noted that the statutory procedural protections of judicial review and stays are essential tools in meeting the government's constitutional obligation to provide procedural due process for immigrants facing removal. Our power and obligation to participate meaningfully in the statutory scheme, as structured by the Constitution, is a foundational element of our analysis in this appeal.

Turning now to the application of these principles to the facts of this case.

I conclude that the deportation of the petitioner before he is able to file a petitioner for review at the Second Circuit makes the opportunity for judicial review by the Second Circuit less meaningful.

There is also the distinct possibility that he will

suffer -- in fact, he will suffer irreparable harm in the meantime, not merely the threat of harm to himself, in Honduras. But the foreclosure of his eligibility for DACA renewal.

I would also like to reiterate and remind the parties of the concerns I just raised with respect to the suspension clause analysis regarding how BIA stay request review works and whether it is sufficient to protect against the erroneous deprivation of liberty.

I'm also persuaded by the analysis of a district court in California, to be sure, in *Chhoeun v. Marin*, 306 F.Supp. 3d, 1147, noting there that the requested injunction would ensure that petitioners have adequate time and opportunity to access the system that has been constructed to prevent erroneous removals. It is a system that includes the thorough exhaustion of an administrative process and judicial review by the appropriate Court of Appeals. The Court finds that the requested procedural protections are necessary to comport with due process. So I do find substantial question as to the scope and operation of 1252(g) and the due process issues raised by petitioner.

I want to just note, for completeness, that there is a third argument that I do not find to be a substantial question. That is the argument that petitioner has made that removal would violate the 100-day moratorium and DHS' own enforcement

priorities and that the injunction issued in the Southern District of Texas should not apply to him.

This particular challenge would seem to me to be barred by 1252(g) and not appropriately a subject of the *Accardi* doctrine or a claimed violation of the APA to circumvent that bar.

The February memorandum recited that it may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. More pointedly, the memorandum makes clear that it enjoins blanket removal, but it leaves DHS with the discretion to pursue removal in individual circumstances. Based on the submissions of the parties and the representations made to me in oral argument, I'm confident that DHS did not misperceive its discretion in placing or replacing the petitioner in removal proceedings.

Nonetheless, I do find serious questions on the other two areas, the scope of the writ and how it interacts with the suspension clause, and the possibility of due process issues.

Having found that, and I realize -- I promise you, for a moment of levity, that the rest of this is a lot shorter. But having found this issue, I focused the most time on the merits issue, on the substantial questions issue, because it has the most complexities. But petitioner must also demonstrate that the balance of hardships tips decidedly in his

favor, and on that I find that it does.

The Second Circuit has shown or has held, excuse me, that a showing of irreparable harm is the single most important prerequisite. I'm quoting from the *Yang* decision I mentioned earlier. To demonstrate irreparable harm, the movant must demonstrate that they will suffer an injury that is neither remote nor speculative, but actual and imminent, and one that cannot be remedied if a court waits until the end of the trial to resolve the harm. I'm quoting there from *Faiveley Transportation Malmo AB v. Wabtech Corporation*, 559 F.3d 110, a Second Circuit decision from 2009.

I accept the petitioner's arguments in this regard that removal prior to adjudication of his motion to reopen would violate his due process rights, and that there would be a presumption of irreparable injury that flows from a violation of constitutional rights. It would make him ineligible for DACA. It would render him vulnerable to the risk of persecution and harm in Honduras, and there is a personal cost of being separated from his family in the United States.

A lot of these irreparable harm issues flow naturally into the question of the balance of equities and the public interest, and for this reason I find as well that the balance of equities tips decisively and decidedly in petitioner's favor.

There are other issues, though, including the medical

issues that have been identified by petitioner's counsel. There is also a public interest in the constitutionally sound and fair administration of the immigration laws. There are completing public interests in terms of New York City's detainer law and New York State's interest as expressed in its amicus brief.

And, conversely, it is not as evident why there needs to be such a rush to remove petitioner at this time, particularly since he does not seem to fall within the administration's enforcement priorities set forth in the various memoranda that were identified last week.

I have reviewed the government's letter of yesterday discussing the circumstances of the dropping of the criminal charges against petitioner. The fact of his arrest, however, does not affect my decision. I had a reference to allegations that were dropped. I have no evidence substantiating them.

I do want to make clear what I am and am not doing here. In granting injunctive relief I am not saying that petitioner is entitled to have this case reopened by the BIA. I am not saying that he is entitled to DACA eligibility renewal. All that I'm saying is that he has raised sufficiently meritorious legal issues and that he has presented sufficiently compelling evidence on the remaining factors of the preliminary injunction analysis that he should not be removed from this country by undertaking those efforts.

Related to this issue is the question of *Mapp* relief. The Court has inherent authority to grant bail to habeas petitioners when the petition raises substantial claims and extraordinary circumstances make the grant of bail necessary to make the habeas remedy effective. I am quoting there from the decision itself.

The *Mapp* holding has been affirmed and extended post Real ID Act. It's done so in the first instance in *Elkimiya v. Department of Homeland Security*, 484 F.3d 151, a Second Circuit decision from 2007, and the *S.N.C.* district court decision from 2018 also makes reference to it.

I find that petitioner has raised substantial claims. More pointedly, I am advised that he cannot effectively apply for renewal of his DACA eligibility or relief while detained and that bail is necessary to permit him to do that. ICE has denied his parole request, and he was not granted bail earlier this week.

There are certain medical issues that I understand may not be or may not be as well addressed while he is detained. I do recognize that severe health issues have been a basis for *Mapp* relief in the past, and this happened particularly last year in the context of certain habeas requests that were occasioned by the COVID-19 pandemic.

They are not the principal basis for the relief that I am awarding. I am expecting that the medical issues of which

petitioner complains will be addressed very promptly upon his release.

As I noted earlier, and want to underscore again, I am granting *Mapp* relief in order to allow petitioner to pursue his DACA renewal. I recognize that the effect may be to ease other burdens that he has, his medical issues or his immigration litigation more broadly. But I'm granting the relief to allow the DACA process to proceed. If that concludes before the motion to reopen is resolved, that may well amount to changed circumstances warranting the resumption of petitioner's detention.

That is my resolution of the preliminary injunction motion. There are a few sort of miscellaneous matters I want to address with the parties.

Again, perhaps reflecting my experience, which may be different from all of your experiences, I would expect the parties would be able to agree on the conditions of a bond for Mr. Castillo's release. It was not my intention to just let him out with no conditions whatsoever. So my hope would be that I could allow a period of time that would be sufficient for the parties to either come to a decision or to come to me with your competing proposals and let me decide. That's what I am proposing for the parties.

Related to that, I'd like to just address Ms. Friedman for a moment.

Ms. Friedman, if this is a matter where the government wishes to appeal and wishes to prevent Mr. Castillo from ever leaving the facility, I am prepared to stay my decision for a couple of days because I do think -- I want to give the parties -- let me say this. As I am staying this decision, what I'm expecting is that the parties will get together and figure out bail conditions and/or the government will appeal to the circuit and ask for what I've done today to be undone.

Ms. Friedman, I realize I am springing this on you with no notice, but it was my intention to stay the effect of my decision or -- in other words, that Mr. Castillo was not getting out before Wednesday of next week -- to give everybody a chance to propose a bond and to give the government a chance to decide whether it wants to appeal.

Ms. Friedman, beginning with you, is there any reason why I may not do that?

MS. FRIEDMAN: I am not aware of any, your Honor. ICE has already committed that he will not be removed prior to that date anyway, so I'm not aware of any.

THE COURT: Ms. Friedman, on my larger point about you and your adversaries consulting about a bond, you heard me mention last year, and last year during the height of the early pandemic, I had discussions with members of your office regarding meetings to propose bonds for folks who were detained at the Orange County Jail. In those cases they were let out

because of very serious medical conditions, but they weren't let out on their own recognizance. There was a bond. For this reason, I thought or I think that the parties could get together and agree upon conditions.

Ms. Friedman, is that a thing that can be done or is what I'm saying completely foreign in this context?

MS. FRIEDMAN: My office has definitely had conversations where they have agreed and presented things to judges, so I definitely think we can have conversations with opposing counsel.

THE COURT: Thank you.

Ms. Friedman, is there anything that I have omitted resolving from your perspective?

MS. FRIEDMAN: I don't believe so, your Honor.

THE COURT: Thank you.

I know one of the downsides of having an oral decision is, you need to think about everything I've said and perhaps get a transcript and look at everything I have said, but I believe I addressed everything that the parties wanted me to address.

Ms. Austin, the same questions to you. I am not letting your client out the door before Wednesday, hoping that the parties can agree on a bond or the Second Circuit will do something or not do something.

Do I understand that you will be able to have those

discussions or another member of your team will be able to have those discussions with the government about the bond?

MS. AUSTIN: We absolutely can, your Honor. I would ask, given that in the past my experience in this situation is often that we diverge on at least some points, whether you would want a single letter summarizing both parties' positions, or two, and also by what date, to the extent that we do not reach agreement on full conditions. I think we could do that as soon as 24 hours from now or tomorrow afternoon, but I think we are eager to keep the process moving and give your Honor time, to the extent there is any disagreement, but we would, of course, conform with whatever schedule you set for the submission of that one or two letters.

THE COURT: I think one or two letters by end of day Monday because I'm telling myself that if you have additional time you will get that much closer to resolution. But Monday will still give me time to decide the issues. Close of business. The normal close of business hours. Not midnight, please. But that seems to make the most sense.

I've had it both ways. If the parties want to have one letter with both sets of positions, fine. If you want two letters, fine. I'm agnostic on the issue. I just want everyone's views on things.

Ms. Austin, this second line of questioning is, from your perspective, is there anything that I have left open?

MS. AUSTIN: I don't believe so, your Honor.

To the extent that there is anything logistical, I think we could include it in our letter as far as the logistical steps necessary for a district court to enter a bond. That's been somewhat difficult to effectuate in the past, but we can incorporate that into our discussions with the government and address any issues in our submission.

THE COURT: I know I've done it, because I know I've done it last year, and I know a number of my colleagues have done it last year, with particular respect to the Orange County Jail. So I'm assuming something similar could be put together, and I will let you speak with your colleagues and see what that is. Again, I just did not want to leave anyone with unresolved issues.

Ms. Austin, from your perspective and your colleague's perspective, is there anything else to address in this proceeding?

MS. AUSTIN: I don't believe so, your Honor.

THE COURT: Ms. Friedman, is there anything else to address in this proceeding?

MS. FRIEDMAN: No, your Honor.

THE COURT: I thank you all very much. I thank you in particular for your patience as I reviewed the oral decision.

Be well each of you. We are adjourned. Thank you.

(Adjourned)

EXHIBIT 1-B

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

RÜMEYSA ÖZTÜRK,
Petitioner,

v. No. 2:25-cv-00374

DONALD J. TRUMP, et al.,
Respondents.

Declaration of Dahlia M. French, Esq., submitted in support of Petitioner's Motion for Release Under *Mapp v. Reno*

I, Dahlia M. French, declare the following under pain and penalty of perjury:

1. I am over 18 years of age and am fully competent to make this declaration. I have over 25 years of experience as a licensed immigration attorney. I earned my Juris Doctor in 1993, received bar admission in Connecticut (1993) and Ohio (1994) and have practiced immigration and international tax law since 1994. I am also admitted in the US Tax Court and the Federal District Court for the District of Northern Indiana.

2. Since obtaining my license in December of 1993, I have specialized in immigration law, and specifically in academic immigration. I have been a member of the American Immigration Lawyers Association ("AILA") since January of 1998. As a member of AILA, I have served in various volunteer positions, including providing guidance to members on academic immigration issues, through practice advisories, speaking engagements, book chapter contributions, and answering direct questions on listservs. I am currently the Managing Attorney in the law firm French Legal.

3. I practiced in private law from 1993 to 2005, then transitioned to in-house immigration roles at the University of Virginia, Vanderbilt University, and Texas Tech University Health Sciences Center, from 2005 to 2021. With 16 years leading

immigration offices in higher education, I've served as a Designated School Official (DSO), Alternate Responsible Officer (ARO), and Responsible Officer (RO). My immigration law practice focuses on academic, medical, business, and family immigration, with expertise in F-1, J-1, and M-1 visa categories, their derivatives, and institutional sponsorship obligations — including detailed knowledge of the F-1 international student program, the Student & Exchange Visitor Information System (SEVIS), and the laws, regulations, and legal guidance related to SEVIS and international students in F-1 status.

4. I am a sought-after speaker at immigration webinars and conferences, provide expert advice and mentorship to colleagues, and have authored book chapters, journal articles, and practice advisories on academic immigration matters. I am considered a subject matter expert on academic immigration and issues affecting individuals in F-1, J-1, or M-1 visa status and the J-1 Exchange Visitor program

5. As of 2003, all US academic entities who wish to sponsor international students must go through a certification application process (for F and M sponsorship permission) or designation process (for J sponsorship permission). Each visa category has its nuances. F-1 status is available from kindergarten to post-secondary education.

6. SEVIS is the acronym for the Student & Exchange Visitor Information System that is used to monitor and manage persons in F-1, J-1, or M-1 visa status and their dependents.

7. Schools sponsoring F-1 Students must be certified by Student & Exchange Visitor Program (SEVP). As part of the SEVP certification process, schools must designate one employee as a Principal Designated School Official (PDSO) and at least one additional employee as a Designated School Official (DSO). Only the PDSO and DSO (or

multiple DSOs) are given access to the SEVIS database. These international student officials are a primary point of contact for both an F-1 student, and responsible for SEVIS record terminations.

8. After entering the USA, the F-1 student reports to the DSO, enrolls and begins attending school, and the DSO updates the SEVIS record to confirm the student is duly enrolled in a full-time program of study.

9. To maintain visa status, F-1 students must follow specific requirements including: maintaining a full-time course load each semester (with an exemption given for the final semester if less than full-time credits are needed to graduate); refraining from any unauthorized employment and only participating in authorized employment whether on-campus or off-campus; reporting to the DSO before taking any actions that affect the SEVIS record such as dropping to part-time status, taking medical leave, withdrawing from the program, participating in academic internships, and changing visa status; reporting to the DSO at the start of each session or semester or use whatever method the DSO requires to confirm enrollment each semester.

10. F-1 student status continues as long as the nonimmigrant continues to study in the USA. The student's I-94 will have a "Duration of Status" or "D/S" annotation rather than a fixed end date. F-1 status includes all periods of approved post-degree completion employment authorization.

11. US consulates will revoke a visa when they receive information that an F-1 student was charged with a DUI or DWI offense. Consulates rarely provisionally revoke an F-1 visa for any other misdemeanor offenses or derogatory reasons. This is consistent with the Foreign Affairs Manual (FAM) guidance.

12. I know of no time, before April 2025, that a US consulate revoked a visa at the request of ICE, and solely because ICE terminated a SEVIS record. That is because SEVIS record termination has no relationship to visa issuance after a person is in the USA.

13. A visa remains valid even when a SEVIS record is terminated, and students often cure a SEVIS violation by exiting and re-entering the USA using the unexpired visa that was issued to them before SEVIS record termination.

14. In my experience, ICE has never detained a student following SEVIS termination or visa revocation, even if a criminal charge was involved. I know of no situation where ICE has done this when the student is still enrolled in school, or even when the student has withdrawn from school and disengaged from communication with the DSO. Even in the latter scenario, where the former student is clearly in violation, in my experience ICE has not sought out and detained the former student.

15. There is no reason to detain a student who is still enrolled in school. This is because the student would be taking steps to cure the violation, and one of the requirements to curing is that the student remain enrolled as a full-time student. Therefore, it would be inconsistent and harmful for ICE to detain a student who was taking steps to curing a SEVIS termination. This is why ICE does not detain students after a SEVIS violation.

16. I am not a party to this action or proceeding. I am aware of the facts stated herein of my own knowledge, and, if called to testify, I could and would competently so testify.

[signature block on next page]

Executed on May 2, 2025, Lubbock, TX.

Dahlia M. French, Esq.

EXHIBIT 1-C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

RÜMEYSA ÖZTÜRK, *Petitioner*, v. **DONALD J. TRUMP,** et al., *Respondents.*	C.A. No. 25-374-WKS

DECLARATION OF ELIZABETH GOSS, ESQ.

I, Elizabeth Goss, declare the following under pain and penalty of perjury:

1. I am over 18 years of age and am fully competent to make this declaration. I have over 25 years of experience as a licensed immigration attorney. I earned my Juris Doctor in 1999, received bar admission in Massachusetts (1999) and New York (2000) and have practiced immigration law since that time. I am also admitted in the U.S. District Court for the District of Massachusetts.

2. Prior to practing law, I worked at Tufts University as an Advisor and served as the Designated School Official and Responsible Officer ("DSO/RO"), and later as the Director of the Health Sciences Campus- International Students & Scholars office, from 1993 to 1999. In these positions I was responsible for managing all aspects of immigration benefits for F/J/H1B/TN/O-1 visa and Legal Permanent Resident cases.

3. I was also a founding member of NewFront Software that created fsaATLAS, one of the first software programs designed for institutional use to interface with the SEVIS system. Our company worked with the former Immigration and Naturalization Service ("INS") to ensure communication between the F/J visa programs and the government's Student and Exchange

Visitor Program ("SEVP"). In 2003, fsaATLAS was acquired by Sungard-SCT (which merged into Ellucian), and the product was renamed "Ellucian ISSM," which is still in use today.

4. Since obtaining my license in December of 1999, I have specialized in immigration law, and specifically in academic immigration. In my practice, I have consulted with thousands of students regarding their immigration status, and have represented hundreds of students in proceedings to correct or mitigate problems with their F-1 visas.

5. Since 1993, I have been a member of NAFSA: Association of International Educators, a nonprofit association dedicated to international education and exchange. I have been a member of the American Immigration Lawyers Association ("AILA") since 2000. As a member of NAFSA and AILA, I have served in various national leadership roles and providing guidance to members on academic immigration issues, including through practice advisories, speaking engagements, and book chapter contributions. For example, I recently co-authored the chapter "O Nonimmigrants" in the 2022-23 edition of AILA's publication "Navigating the Fundamentals of Immigration Law."

6. My immigration law practice focuses on academic, medical, business, and family immigration, with expertise in F-1 and J-1 visa categories, their derivatives, and institutional sponsorship obligations — including detailed knowledge of the F-1 international student program, the Student and Exchange Visitor Information System (SEVIS), and the laws, regulations, and legal guidance related to SEVIS and international students in F-1 status. I have represented both students and institutions in relation to SEVIS compliance and record termination requirements and reinstatement applications.

7. In my experience, it is highly unusual for ICE or any other agency to detain a student in connection with the termination of a SEVIS record. I have never seen an arrest based on the termination of a SEVIS record.

8. In my experience, it is highly unusual for ICE or any other agency to detain a student in connection with an F-1 visa revocation. I have never seen a student arrested based on a visa revocation.

9. I am not a party to this action or proceeding. I am aware of the facts stated herein of my own knowledge, and, if called to testify, I could and would competently so testify.

Executed on May 2, 2025, in Boston, MA.

/s /
Elizabeth Goss

EXHIBIT 1-D

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

RÜMEYSA ÖZTÜRK,
Petitioner,

v. No. 2:25-cv-00374

DONALD J. TRUMP, et al.,
Respondents.

DECLARATION OF ATTORNEY MAHSA KHANBABAI SUBMITTED IN SUPPORT OF PETITIONER'S MOTION FOR RELEASE UNDER *MAPP v. RENO*

I, Mahsa Khanbabai, declare under penalty of perjury that the following is true and correct:

1. I am an attorney for Petitioner Ms. Rümeysa Öztürk. I submit this declaration in support of the her motion for release under *Mapp v. Reno*.

2. On April 16, 2025 I attended the first Master Calendar Immigration Court hearing for Ms. Öztürk in Basile, LA. The presiding judge, the Honorable Sherron Ashworth and the DHS attorney were present via video.

3. The Immigation Court also held a bond hearing the same day.

4. The only document the Department of Homeland Security (DHS) used in the bond hearing—and indeed, the only documentary evidence it has submitted in the entire immigration record— is a memo dated March 21, 2025 addressed to Andre Watson, Assistant Director, National Security Division, DHS from the Bureau of Consular Affairs, State Department (DOS Memo). This is the same DOS memo that Ms. Öztürk submitted in federal court after DHS had filed it in her immigration proceedings. *See* Exhibit 91 and 91-1.

5. The Immigration Judge made a finding that Ms. Öztürk was both a flight risk and a danger to the community and denied bond.

I declare under penalty of perjury that the foregoing is true and correct copy.

Executed on May 2, 2025, in Baltimore, MD.

Mahsa Khanbabai Esq.

EXHIBIT 1-E

DECLARATION OF AYANNA THOMAS

I, Ayanna Thomas, declare as follows:

1. I am the Dean of the Graduate School of Arts and Sciences on the Medford/Somerville campus of Tufts University in Massachusetts. I have held this position since February 2025. Before that, I served as the Dean of Research for the School of Arts and Sciences. I am also a professor in the Department of Psychology.

2. As the Dean, I have personal knowledge of the contents of this declaration, or have knowledge of the matters based on my review of information and records gathered by Tufts University personnel, and could testify thereto.

3. Rümeysa Öztürk has made excellent and timely progress in the Child Study and Human Development Ph.D. program. Ms. Öztürk can complete her degree requirements upon her return to Tufts. Ms. Öztürk will be able to schedule her qualified review (a meeting with her advisors to discuss her scholarship) whenever she becomes available to do so to determine the appropriate scope of research for her dissertation. Following that meeting, Ms. Öztürk will be able to schedule a dissertation proposal hearing with her advisors and complete her degree.

4. As we approach the end of the academic year, I note that Ms. Öztürk has been at Tufts for five years and that this will be her final year in the program. I know from my own experience as a Ph.D. candidate and from advising many other Ph.D. candidates, that the final year of any Ph.D. program tends to be the busiest, with milestones and deadlines that compound on one another. This year will be the culmination of Ms. Öztürk's studies, and she has number of teaching and research obligations to fulfill on campus this summer.

5. Ms. Öztürk is scheduled to teach a course this summer titled "Introduction to Children's Media" in the Pre-College Program at Tufts University College. Ms. Öztürk has taught this course during previous summer terms and would receive four thousand three hundred thirty-two dollars ($4,332.00) for teaching such course. She is also scheduled to receive five thousand dollars ($5,000.00) in support through a private grant that has been awarded to her advisor, Dr. Sara Johnson. In addition, Ms. Öztürk has been awarded a Graduate School of Arts and Sciences Dean's Summer Fellowship in the amount of five thousand dollars ($5,000.00) to continue to support her studies through the summer.

6. This grant and fellowship support will allow Ms. Öztürk to continue the data collection and interviews necessary to complete her dissertation research. All awards, grants, and salary will be available to Ms. Öztürk upon her return.

7. The University is also able to provide housing on campus for Ms. Öztürk to ensure that she has a safe place to resume her studies.

8. The University is looking forward to Ms. Öztürk's return so that she can complete her studies.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 1, 2025, at Tufts University.

AYANNA THOMAS

EXHIBIT 1-F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

RÜMEYSA ÖZTÜRK,

Plaintiff,

v.

PATRICIA HYDE, *et al.*,

Defendants.

Case No. 2:25-cv-00374

DECLARATION OF BECKY PENBERTHY OF BURLINGTON COMMUNITY JUSTICE CENTER IN SUPPORT OF PETITIONER'S MOTION FOR RELEASE UNDER *MAPP V. RENO*

Pursuant to 28 U.S.C. § 1746, I, Becky Penberthy, Adult Restorative Services Manager of Burlington Community Justice Center, declare under penalty of perjury the following:

1. I am Becky Penberthy, my pronouns are she/her, and I am restorative justice practitioner living and working in Burlington, Vermont.
2. I have worked as a restorative justice practitioner for 21 years. I currently co-manage adult restorative justice services for Chittenden County, including Pretrial Services. Among other tasks, my work includes: providing direct services to victims of crime and those responsible for crime; facilitating processes around larger community-based incidents of harm not rising to the level of a crime where there is great impact; supervising a team of professionals providing direct service; serving as a Member of the CJC management team; regularly attending and providing input in the Criminal Division of Vermont Superior Court; and regularly facilitating restorative processes with those responsible, with those harmed, with community volunteers and others.
3. I also serve as an Adjunct Professor at Vermont Law and Graduate School, where I teach a graduate-level course on applied restorative justice facilitation.
4. My previous experience includes working as the Court Operations Manager for the Addison County Superior Court, and as the Director of Vermont Pretrial Operations at Lamoille Restorative Center.
5. At the Burlington Community Justice Center, the Pretrial Services Program supports individuals to meet their court-ordered conditions of release, ensure court appearances, reduce detentions, and support public safety. Pretrial Services provides ongoing support throughout the court process.
6. The primary components of Pretrial Services include:
    a. Supervision – We maintain knowledge of and periodic review of court-ordered conditions. We conduct administrative check-ins, held remotely on a platform like Zoom or Teams, with additional check-ins by telephone. If the person is in the State of Vermont, we conduct in-person visits. We also connect with community

supports who can confirm adherence to court-ordered conditions, such as supervisors, teachers, or counselors/clinicians.

b. Court reminders – We make regular phone calls and/or text reminders of upcoming court dates to ensure appearance.

c. Connection to Support – We assess the client's need for additional supports and, where appropriate, connect clients to services such as mental health counseling.

d. Reporting to the Court – As the Court directs, we provide regular updates to the Court regarding compliance with of violations of court-ordered conditions of release.

7. I have met with Rümeysa Öztürk via Zoom from the detention facility in Louisiana and discussed her plans upon release. She expressed a strong desire to immediately return to her PhD research at Tufts University, to live in on-campus housing, to receive her medical treatment in Boston, and to be among her peers and professors. She described her department as very supportive and identified close connections to her friends and academic community.

8. I have also met with leaders from Tufts University regarding systems and accommodations available to Ms. Öztürk upon release. They confirmed the availability of housing, academic supervision, medical care, security, and financial aid for Ms. Öztürk. Tufts specifically identified multiple on-campus housing options available to her upon release.

9. I am ready and willing to provide Pretrial Services to Ms. Öztürk upon her release—including supervision, court reminders, connection to support, and reporting to the Court—pursuant to whatever conditions the Court may set. For example, supervision could include regularly checking in with Ms. Öztürk via video calls and maintaining contact with her dean and academic advisor to ensure her continued engagement in her studies at Tufts.

WHEREFORE, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed at Burlington, Vermont on this 1st day of May 2025.

Respectfully Submitted,

Becky Penberthy

Adult Restorative Services Manager
Burlington Community Justice Center

EXHIBIT 1-G

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

RÜMEYSA ÖZTÜRK,
Petitioner,

v. No. 2:25-cv-00374

DONALD J. TRUMP, et al.,
Respondents.

Declaration of Rümeysa Öztürk

I, Rümeysa Öztürk, under penalty of perjury declare as follows:

1. My name is Rümeysa Öztürk. I am 30 years old. I am a citizen of Turkey.
2. I previously submitted two declarations in this case.
3. I now submit this updated declaration to explain some of my ongoing health and safety concerns and the circumstances of my detention in support of my request for bail and in the alternative for return to New England.
4. I previously provided information about having asthma, the inhalers I use, triggers, and what kind of care I have received while detained.

My History with Asthma

5. Since my arrest, in the span of five weeks, I have had at least eight asthma attacks where I have felt unable to control my coughing. Prior to my arrest, in the span of 2-3 years, I had approximately 9 such asthma attacks in which I felt unable to control my coughing.
6. When I experience these asthma attacks, I am unable to control my coughing, and feel shortness of breath and tightness in my chest. .
7. I have to rely on my emergency inhaler when these attacks occur.
8. Occasionally, I will also use the emergency inhaler when I feel an attack is coming on.
9. I have had to use my emergency inhaler far more than I needed to do in the past, since I was first arrested on March 25, 2025.

10. I have used it for the eight asthma attacks I have had, and then additional times when I have felt an attack coming on. Each time, I use 1-3 puffs of the emergency inhaler.
11. I have had nearly as many asthma attacks in five weeks in detention as I had over the span of 2-3 years outside detention.
12. When I first arrived at the facility, I had to wait approximately two weeks to get the daily inhaler which is used to prevent asthma attacks.
13. Although I have since received the daily inhaler, I continue to experience asthma attacks.
14. Before my arrest and detention, these asthma attacks would last anywhere from 5-15 minutes.
15. Since being arrested and in detention, my asthma attacks now last anywhere from 5-45 minutes.
16. It has become progressively harder to recover from these asthma attacks while in detention.
17. On April 26, 2025, specifically, I had an asthma attack which started around 11:05am and went to approximately 11:40am. This was one of the more severe asthma attacks that I have had. I had to use my emergency inhaler three times.
18. I am very concerned about the severity of these attacks and my ability to manage them.
19. For example, I felt forced to use my emergency inhaler three times on April 26, 2025, but for other asthma attacks, I usually use it up to two times.
20. If I use the emergency inhaler more than twice, I can feel my heart rate quicken for prolonged periods of time, as a side effect. That happened on April 26, 2025 after I used the emergency inhaler three times.
21. The cumulative effect of these asthma attacks leaves me feeling exhausted and anxious.
22. Since being detained, I have also experienced almost daily coughing episodes (coughing attacks) that are not as severe as an asthma attack but still leave me feeling tired and occasionally require me to use my emergency inhaler.

23. Outside of detention, I can more effectively control my environment to avoid exposure to triggers.
24. Once I was diagnosed with asthma and received guidance from my doctors, I made very significant changes to my lifestyle so as to avoid triggers.
25. For example, in my home, I can control which cleaning supplies are used, ensure proper ventilation, avoid strong perfumes, avoid exposure to dust and clean frequently, avoid non-hypoallergenic pets/animals, and access fresh air immediately. I have had to experiment with different cleaning supplies through trial and error to determine which one may trigger my asthma. Occasionally, sometimes I will be outside of the apartment when certain cleaning supplies are used. I also try to avoid using air conditioning, because it affects proper air ventilation. Prior to my arrest, I lived in a spacious apartment where I could have an entire room to myself and open the windows.
26. I avoid crowds and crowded places as much as possible, to ensure I will have quick access to fresh air and strong perfumes. I also avoid crowds because my asthma worsens when I have a cold or viral infection, and I worry about being around other people who are sick.
27. Similarly, at the Tufts University lab, where I spend most of my time on campus, there is proper ventilation, I am able to access fresh air when needed, and my friends in the lab accommodate my condition by avoiding strong perfumes. Additionally, some of my colleagues occasionally bring their pets to the lab. They will give me advance notice if they plan to do so, so I can plan around the pets being at the lab.
28. Before I was arrested, I mostly used my daily inhaler on a regular basis, one puff at night. In winter, when my asthma symptoms would abate, and I occasionally decreased usage without worsening my symptoms.
29. Outside of detention, I do not worry as much about having serious asthma attacks because I know I have greater control over my environment.
30. I do not have control over the exposure to potential triggers. The dorm rooms in detention are very crowded, and the other women have reported seeing mice in the dorm rooms. Additionally, the air conditioning is running most of

the day, and I do not have immediate access to fresh air. The officers order us to clean the dorm rooms every day, and I am exposed to unknown cleaning supplies for 30-40 minutes every day. I am also exposed to the fragrances of the shampoo, body wash, and creams that other people use. The shower is in the dorm, and there is no partition separating the shower from the dorm room which means there is shared airflow between the shower and dorm, so I am constantly exposed to these types of triggers. The dorm room overall is very damp. In order to go anywhere outside of the dorm room, we are forced to wait for long periods of time in locked, packed corridors, which also exacerbates my asthma. It is a very humid environment here, which is different than what I am used to in Massachusetts.

31. Our outside time is very limited and so access to fresh air is also limited. I might get only an hour outside, and some days, I am not allowed to go outside. Now with the weather getting so hot, even though I want to go outside, going outside in the heat where there is limited shade is difficult.

32. Additionally, I am not as concerned outside of detention because I know I can contact a doctor at the Tufts Medical Center. My experience with the Tufts Medical Center is that the staff provide prompt, attentive care, and will adjust my medications as needed. I also know that I can seek medical care at other hospitals or medical centers in the area, as there are several.

33. For example, the most severe asthma attack I had occurred in summer 2023 while I had COVID-19. For nearly ten days, I had a lot of difficulty breathing and it was scary. For almost two months, I was in constant communication with my doctor at the Tufts Medical Center. I visited the doctor both in person and communicated with her online frequently. This was a very scary time for me because I felt I could not get my coughing under control. The doctor was thorough in her follow up, and after that event, she adjusted the prescription for my inhalers. The medical staff at Tufts Medical Center were very kind and supportive, and took their time to address my concerns. Despite this being a very scary time for me, I felt incredibly supported by the medical care I was receiving. None of the other asthma attacks I have had have been as severe as this one.

Difficulty Receiving Medical Care

34. The totality of my experiences of trying to receive medical care since my arrest has led me to the conclusion that I will not receive appropriate care in detention.

35. I have witnessed staff delay in providing care to other individuals who need it, and I am aware of other people with significant medical conditions who are ignored. Detainees can only request medical care through the tablets, and they often wait weeks to receive a response to requests submitted through the tablet. If detainees try to ask officers to alert them to the need for medical attention, they will often delay. For example, one of the other women in the dorm needed medical care and requested it around 9:20pm on a Thursday. She couldn't leave the dorm for breakfast the next morning, she didn't receive any food or medicine until the next afternoon, and she didn't see a doctor until after the weekend.

36. Other women who are detained here who go to visit the medical center report waiting from one to five hours when they try to visit the medical center. The other detainees often report not even being seen in the medical center after waiting several hours, and that there is a lack of interpreters, which makes it more difficult to access and receive care. Most of the detainees cannot keep their medication with them but have to line up outside a window to do so. This is usually around 1pm, and it can take a long time to receive medications. It is very hot and humid in Louisiana right now, so this is difficult. The other day, I observed a woman almost fainting in this line.

37. Other women detained here who have tried to seek medical care for serious conditions ranging from having a miscarriage to cancer report that the nurses only provide them ibuprofen, or they might wait weeks or months to access any medical care.

38. Other women detained here have told me that the nurses and doctors frequently tell them that their conditions are due to "stress", without seriously considering their symptoms or conditions, or providing any other care. Other women report that the doctors tell them that they cannot be this sick, as if they could not have multiple medical conditions simultaneously. The medical

staff frequently try to convince other women that they are not sick. The other women detained here feel as if the medical staff are accusing them of lying about their symptoms and conditions.

39. My own experiences, including a nurse forcibly removing my hijab against my consent, another nurse telling me an asthma attack was "all in your head", another nurse saying to me, "you are giving me a headache", and a doctor telling me "I cannot babysit you" when I tried to ask questions, have all led me to believe that many of the medical staff do not believe us or listen to us, and will not take appropriate care of us.

40. In addition, I have witnessed and experienced how long it can take to receive medical care, even when someone is in urgent distress. For example, when I had my second asthma attack, the other women in the dorm and I were banging on the door for a long time. From the onset of the attack to being taken to the medical center, it was almost an hour. The officers told me I could not go outside to the corridor (which would have been less crowded) nor outside to get fresh air.

41. I have also seen that when someone urgently needs care, they do not receive it promptly. For example, one day, while we were eating, another woman was hit on the head with a tray. It took at least 15 minutes for someone to arrive to examine her. Another time, a different woman had a panic attack outside of the dining hall and it took at least 20 minutes for a nurse to come. There were so many other women present, trying to help her, and when the nurse finally arrived, she showed no sense of urgency. Other women have told me that even when someone has a head injury, medical staff will bring a wheelchair to take them away, without consideration of a possible head injury.

42. I have also directly experienced that many of the staff do not take our requests seriously. I previously mentioned the delay in receiving one of my inhalers. When I first arrived at the facility, I explained I had a chronic condition requiring eye drops. I also requested the eye drops via the request forms on a tablet and submitted grievances concerning my request for eye drops. Also, the Turkish Consulate had reached out to the facility about this.

43. Before my arrest, I used two different types of eye drops daily. One of the eye drops, I received about 10 days later. It was not until nearly four weeks later, after one of my attorneys put in a request, that I received the second type of eye drops, almost immediately after he put in the request.

44. My experience with this delay and then the follow up confirmed to me that many of the medical staff are not concerned with providing care.

45. On April 23, 2025, I was called to the medical center. One of the nurses instructed me to enter and stated it was to give me the eyedrops, but I did not see any other detainees inside the medical unit. I only saw officers and nurses. I did not want to enter by myself, as I did not feel safe doing so. My other experiences hearing from other detainees about what might happen if I enter an enclosed space alone have led me to avoid any such situations as much as possible.

46. The nurse raised her voice and directed me to enter the medical unit repeatedly, in front of a security officer. I insisted that I did not want to enter without multiple detainees present. The nurse claimed that I was rejecting medicine. A security officer agreed with her and pressured me as well to enter the medical unit. I communicated with them that I am not rejecting medication, but that I did not feel safe entering without other detainees and would prefer to enter at a regular time, this was the end of the day, when multiple detainees are present. The nurse was raising her voice at me during this incident, and I felt unsafe and uncomfortable. I walked away from the medical unit.

47. The nurse then followed me to my room after a few minutes, badgering me. When she came inside, she started saying, in a loud voice, unprompted, that she was a good nurse, that I would only get the eyedrops if I entered the medical unit and the door would have to be closed. I told the nurse that another nurse had let me keep the door open before when I visited the medical center, because I didn't feel comfortable. I told the nurse that she was conflicting their own practice. She kept on repeating that she was a good nurse, as if I were implying she was not a good nurse.

48. Other women observed this interaction. They approached us and started sharing the difficulties they had had with this specific nurse and other medical center staff. The nurse became angry, and started pointing her fingers at different women in the room, saying something to the effect that we are all liars and lying to her.

49. A different security officer, who was inside the room, intervened and agreed with the nurse, and directed us all that we should return to our beds.

50. This experience left me feeling like many of the medical staff do not care about our medical issues and only care about exercising power over us. I can see no justification for why I must enter the medical unit by myself without other detainees, where in the medical unit there are multiple nurses and security officers who usually act together or agree with each other on how to treat us.

51. I have also witnessed how poorly many of the medical staff treat other women at the facility. I have seen staff be verbally abusive, raising their voices when being asked to provide medical care.

52. Even some of the officers recognize that we do not receive medical care. On one occasion, I was walking next to another detainee. An officer was having trouble walking, and the detainee suggested to her that she could go to the medical center for assistance. The officer responded that she wouldn't go to the medical center because the staff don't take care of the detainees well, she repeated herself, and said I understand that you [detainees] don't receive appropriate medical care.

53. Even some of the medical staff seem to recognize this issue. On another occasion, one woman reported to me, after she had accompanied another detainee to serve as a translator, that a nurse told her that "you [the detainees] are treated like animals." The nurse stated: "You are not dogs, you are not animals" and she expressed significant dissatisfaction with the facility, and how the officers treat detainees. She said, "I don't know why this place keeps people for so long. Why are they using your lives?"

Cumulative Deleterious Effects of Detention

54. In addition to anxiety about medical care, there are other conditions of my detention that also contribute to my stress. For example, many of the officers are generally unresponsive, and when they do respond to basic requests, they can be rude, frequently yell at us, and are verbally abusive. The general environment is where each moment is filled with stress and control. For example, there are threats of retaliation when we complain or communicate our needs, instead of responding to our problems. I remember, for example, an incident where a woman was threatened with having her phone privileges taken away for repeating a question to an officer about her transfer. On April 30, 2025, in the dining hall, a security officer pushed two different detainees, and they were very upset and scared afterwards.

55. Although stress triggers are usually not the primary cause of my asthma attacks, I do believe they have been contributing factors in some of them. For example, I remember the asthma attack I suffered at the airport the day after my arrest was caused in part by being in such a stressful situation. I remember being so nervous and scared at that time. These stress triggers, I believe are also contributing to my asthma attacks at the ICE facility.

56. The overall conditions described above and others, depriving us of basic human needs, is also negatively contributing to my overall health. I can see how the cumulative effect of lack of proper food, sleep, safe and clean accommodations, and medical care has negatively contributed to several women here, especially those who have been here for a year or longer and those who are pregnant.

57. In addition to stress, we are unable to properly rest on any type of consistent basis. Officers enter the dorm room multiple times a night, loudly, and also talk loudly in the corridor outside the dorm room at night. The officers will enter the room in the middle of the night to get women who might be working. The officers will enter at 3:30am or 4:00am. Between the noise of their keys banging against their chains, letting the doors slam, banging on the bunk beds, and yelling names loudly, it is hard to stay asleep during these interruptions. The officers will enter again at 5am for breakfast, 7am for count, 7:30am for video calls and medical, which means we are woken up

multiple times. Also, for a period of about three weeks since my arrest, officers were entering the dorm rooms every 15-20 minutes in the night while we were sleeping. Additionally, lights are only weakly dimmed at night for a few hours, for 12:30am – 5:00am, which also makes sleep difficult. This lack of consistent sleep is deeply affecting me and other women here.

58. It is very hard to access nutritious food, including fresh fruit and vegetables. Some of the food we receive is inedible, for example, the rice is often undercooked.

59. I have heard from multiple women who work in the kitchen that there is a mice problem in the kitchen.

60. I have requested vegetarian food, and this means that usually I only receive more bread or beans, and sometimes even the staff will remove salad. I have also observed that even though I have requested vegetarian food, they will serve meat gravy as "vegetarian." Detainees who have other conditions that are affected by diet, such as diabetes, do not receive appropriate food.

61. The options available for purchase through the commissary are also not healthy and it is not consistently stocked. The rules for requesting items through the commissary are also strict, each detainee can only place one request per week.

62. Almost all of the other detainees report digestion and worsening medical issues. The cumulative, long term effect of this poor nutrition is very deleterious to all of us, including those who have been here the longest and those who are pregnant.

My Plans If Released

63. If I am released, I plan to return to Somerville, Massachusetts and resume my education.

64. Tufts University has informed me, through my lawyer, that I will be able to move into graduate student housing if I am released, as my current lease ends at the end of May. I will move into this graduate student housing if released.

65. I will live in Massachusetts until I complete my degree. I have a stipend and will receive grants through the university that will allow me to support myself, if released.

66. In my field, it is common, as a PhD student, to attend academic conferences multiple times a year. Attending conferences and presenting at conferences is an important part of my academic and professional development.
67. Since being in detention, I have already missed one conference that I was planning to attend. I also missed student presentation day in my department, where we celebrate the year long work of undergraduate and graduate students.
68. I was scheduled to attend and present at another conference, the biannual meeting of the Society for Research in Child Development, in Minneapolis, starting on May 1, 2025.
69. I was going to participate in a daylong teaching workshop and present my work on one of my qualifying papers on character role models. Unfortunately, I was unable to present at or attend the conference because of my detention.
70. Prior to my arrest, I spent many days making my schedule for conferences and networking events, including arrangements such as flight, hotel, and other logistics.
71. If I am released, I will seek the Court's permission to attend any conferences outside of Massachusetts and/or Vermont.
72. My detention has placed a significant cost on my ability to pursue my education and complete research.
73. I am the first woman in my family to pursue a PhD. My family includes multiple academics, including teachers and professors, but I would be the first woman to complete a PhD.
74. I have pursued multiple degrees before starting my PhD program.
75. I have been awarded scholarships to pursue my studies, including a Fulbright Scholarship, and from the Turkish government during college.
76. I do not have access to my research and writing materials in detention. I am unable to complete basic aspects of my work that are needed to work on my dissertation proposal and project. My dissertation will explore how young people use media in pro-social ways (benefiting others), such as helping their friends, supporting their peers during difficult times, exploring their

creativity, bringing positive change, and expressing care for others and their communities.

77. I am also likely to miss my qualifying review which was originally scheduled for May 2025.

78. For my qualifying review, I submitted my documents to two advisors reflecting all the training and expertise I have developed before and during my PhD program, and what I hope to accomplish after the PhD. In this portfolio, I have reflected on my experience across various competencies: teaching, grant writing, research, statistics, applied work, cultural sensitivity, and other competencies.

79. The qualifying review then includes a meeting with these two advisors to discuss my portfolio. This qualifying review is an important step before continuing the rest of my dissertation work. During the qualifying review, my advisors will help guide the direction of my dissertation by reviewing my dissertation prospectus and future steps.

80. If I am released, I will take steps to reschedule this qualifying review as soon as possible.

81. At this stage in my PhD, I still need to submit an edited dissertation proposal (different than the prospectus) and go through the Institutional Review Board (IRB) process.

82. The IRB process is a necessary step in my research and writing, I cannot collect data until I have received IRB approval.

83. I will be interviewing participants on campus at Tufts University. This process might take one to three months. I cannot collect data from participants in detention. Privacy is a very important part of research, I am required to store participant data in a protected file, which no one else can access, besides the research team and the IRB.

84. During and after completion of these interviews, I will discuss the data with my advisors and lab peers, and analyze for purposes of my thesis and work on writing up and publication.

85. Before I was arrested, I had planned to complete this process, including my dissertation defense by November 2025, to graduate in February 2026.

86. Unfortunately, because of my detention, I have lost so much time, and I am being kept away from my studies and training. I am confident that if I am released in May, I will be able to complete all of these steps in collaboration with my advisor. But if I stay in detention past May, I am not sure whether I will be able to complete all these steps before November 2025, which would delay my completion of the PhD.

87. If released in May, I am also planning to teach in a summer program. I have taught in this program for the past two years. As part of this program, I teach a course titled "Introduction to Children's Media" in a pre-college program. Previously, students have evaluated the course to be beneficial, engaging, and inclusive, and I would be excited to teach it again, if I am released in time. The course is very meaningful to me because it helps empower students of various backgrounds who come from across Massachusetts and around the world.

88. I hope that in addition to resuming my education, my research, and my teaching, that I am also able to return to my community at Tufts. I have developed meaningful connections with colleagues, professors, students, and multiple student groups in my department and university. I have made friends through our weekly graduate writing time, through my union, fitness classes, from attending graduate retreats, and through interfaith chaplaincy, and from different departments at Tufts. While I have a core group of close friends and loved ones, I am also connected to a larger number of friends and colleagues at the university that I hope I can return to.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

05/02/2025
_____
Date

ss *Rümeysa Öztürk*
RÜMEYSA ÖZTÜRK

EXHIBIT 1-H

Declaration of Dr. Jessica McCannon

I, Dr. Jessica McCannon, do declare:

1) I am a double board-certified physician in pulmonary disease and critical care at Massachusetts General Hospital ("MGH"), where I also serve as Vice Chair for Faculty Development for the Division of Pulmonary and Critical Care Medicine. I completed a clinical / research fellowship in pulmonary and critical care medicine with MGH, Brigham and Women's Hospital, and Beth Israel Deaconess Medical Center. I completed my residency and internship in internal medicine at MGH. I received my Doctor of Medicine from the Weill Medical College of Cornell University.

2) Currently, seventy percent of my time is spent in ambulatory and inpatient medical care of patients with pulmonary disorders and critical illness. I care for patients with all pulmonary disorders, including asthma, and I have evaluated, managed, and followed hundreds of patients with asthma across my practice of over a decade.

3) Prior to my current role treating patients with asthma and other pulmonary illnesses, I served as director of Critical Care Services at Mount Auburn Hospital (2016-2021), in addition to other major administrative leadership positions. I also have been appointed as an instructor in medicine at Harvard Medical School (2008-2009; 2013-2021), teaching courses and teaching / supervising rotations and lectures involving pulmonary and critical care medicine.

4) This declaration is based on my expertise and experience as a practicing, Board Certified pulmonologist for 14 years, my review of Ms. Öztürk's available medical records regarding her asthma diagnosis and treatment from Turkey and Tufts University, and my remote oral conversations with Ms. Öztürk to elicit her clinical history. Because Ms. Öztürk is still detained in Louisiana, I was unable to personally conduct a physical examination, personally perform objective measurements in lung function or peak expiratory flow, or otherwise meet with her in person.

5) Asthma is a lung disease characterized by chronic inflammation of the airways, and associated with variable and recurrent symptoms, as well as variable expiratory airflow limitation or bronchial hyperresponsiveness. Symptoms include shortness of breath, chest tightness, wheeze, and cough. These symptoms vary in frequency and intensity over time depending on a myriad of triggers, and their outcome can be severe or even fatal if they are not addressed properly.

6) In my practice, I frequently hear patients describe the experience of an asthma attack as feeling like they are suffocating. They often express that it can be very scary to feel like they can't breathe.

7) Common triggers for asthma symptoms include but are not limited to exercise, exposure to inhaled allergens such as cats, dogs, pollen, or irritant exposures such as cleaning supplies, detergents, perfumes and other strong smells; changes in weather/seasons; stress; and upper respiratory infections.

8) Goals of asthma management are to control symptoms, to reduce risk of exacerbations, to preserve lung function and to minimize side effects of medications. There are a range of pharmacologic regimens used including inhaled steroids and inhaled bronchodilators. Typically, this can include what is colloquially referred to as a "maintenance inhaler," which is used daily to help decrease inflammation, reduce symptoms and risk of asthma exacerbations. Regimens also typically include what is colloquially referred to as a "rescue inhaler," which is intended to be used intermittently for quick emergency relief to reduce symptoms caused by airway inflammation or hyperresponsiveness occurring because of exposure to a trigger.

9) A rescue inhaler is a temporizing measure which is meant to help alleviate worsening symptoms after exposure to a trigger. If the exacerbation was caused by an environmental factor, a rescue inhaler will have only limited efficacy if the person is not able to remove themselves from the trigger itself. It is somewhat akin to throwing a flotation device to someone in the ocean: it can help them stay afloat, but on its own it does not solve the dangerous situation.

10) If a person is exposed to an environmental or allergic trigger for their asthma and is both unable to avoid the trigger and only has access to their typical maintenance and rescue inhalers, their asthma control may worsen to the point that they require nebulized bronchodilators, systemic oral treatment with steroids such as prednisone and/or evaluation and care in an emergency room, hospital or intensive care unit setting.

11) The field of pulmonology has learned over the course of the last decade that even patients who have well-controlled asthma or infrequent symptoms still have an increased risk of asthma exacerbations, asthma exacerbation requiring hospitalization, and asthma exacerbation leading to death if their asthma symptoms are not properly addressed.

12) Because asthma is a chronic condition, the goal in treating patients with asthma is not to cure the condition—which is not possible—but to do everything possible to make sure their asthma is well-controlled. Control of asthma is assessed by understanding weekly burden of

symptoms, frequency of nighttime awakening, frequency of use of quick relief inhaler, and ability to participate in routine activities. There are tools designed to help medical providers and patients understand asthma control over a 4-week period, but it is also important to assess general trends in symptoms and frequency of rescue inhaler use and activity limitations over longer periods of time. Assessing for presence of risk factors for exacerbations is also an important part of assessing control.

13) The ACT is a validated 5-question tool designed to help patients and health care teams understand asthma control. Scores range from 5 to 25. Scores > 19 indicate well-controlled asthma. Scores of 16-19 indicate not well-controlled asthma. Scores 5-15 indicate very poorly controlled asthma. (Schatz M et al. J Allergy Clin Immunol. 2009;124(4):719–723).

14) GINA (Global Initiative for Asthma) is a collaborative led by leading asthma experts from around the world that shapes asthma care, providing recommendations and strategies based on scientific evidence to care teams and patients worldwide. GINA control assessment includes four questions about asthma control over the preceding 4 weeks with yes/no answers, specifically does the patient have and/or use: 1) Daytime asthma symptoms more than twice a week, 2) Any nighttime awakening due to asthma, 3) Short acting quick relief medication for symptoms more than twice weekly, 4) Any activity limitation due to asthma. If a patient answers no to all questions, their asthma is well-controlled. If a patient answer yes to 1 or 2 of these questions, their asthma is partly-controlled, and if a patient answers yes to 3 or 4 of these questions, they have uncontrolled asthma. (Global Initiative for Asthma. (2024). Global Strategy for Asthma Management and Prevention. Updated May 2024. Available from: https://ginasthma.org/)

15) One side effect of an increased use of a rescue inhaler can be a fast heart rate and a feeling of tremulousness and uneasiness.

16) Based on the clinical history that Ms. Öztürk shared with me, she has a childhood history of seasonal/environmental allergies, allergic rhinitis and eczema—which are common among patients with asthma—and she recounted an episode of urticaria (hives), all of which speak to her predisposition to allergic disease. She also has a family history of asthma. Additional risk factors for worsening of asthma control include acid reflux which she has been treated for in the past, as well.

17) Ms. Öztürk described her triggers to include pollen, dust, cats, upper respiratory infections and stress. Strong odors from cleaning supplies, detergents, smoke, perfumes also cause acute symptoms. When she is exposed to these triggers, she reports experiencing increased frequency and intensity of paroxysms of cough, as well as chest tightness.

18) Ms. Öztürk reports, and the records I reviewed reflect, that she was diagnosed with asthma in June of 2023, when she presented with several weeks of persistent dry cough, predominantly at night, with a history of allergic rhinitis. In office spirometry demonstrated that three of the four measurements were normal, but one (the FEF-25-75%) was low, which can indicate an impairment in the function of small airways, suggestive of asthma. At that time she was started on a once daily maintenance inhaler and she was provided with a rescue inhaler, as well.

19) Based on our conversations and the medical records that I reviewed, it my opinion that Ms. Öztürk has asthma, most likely cough-variant asthma, with an element of allergic asthma, as well.

20) Ms. Öztürk shared, and her records reflect, that she experienced an acute exacerbation of her asthma in the context of a COVID infection in July of 2023. She described that for several days she was experiencing unstoppable coughing, she felt chest tightness, and she was scared. It is not unusual for patients with asthma to have significant exacerbations of their symptoms if they contract upper respiratory infections. During this exacerbation, Ms. Öztürk was evaluated and followed closely by student health services and reassessed frequently over many days.

21) Based on my conversations with Ms. Öztürk and what I understand from her medical records from Tufts, in the year and half between that July 2023 exacerbation and Ms. Öztürk's arrest on March 25, 2025, her asthma was well-controlled. During that time, she would often use her maintenance inhaler once a day at night. There were periods during the winter months when her asthma was so well-controlled that she did not need to use it regularly, but she would restart using it on a daily basis once the seasons changed or if she had an upper respiratory infection, was exposed to strong scents or chemicals, or as on one occasion, a cat. Ms. Öztürk shared that she had approximately 8 additional asthma attacks (after July 2023), meaning a period of increased frequency and intensity of cough and shortness of breath, during which period she would use her rescue inhaler slightly more frequently. She would otherwise typically use her rescue inhaler an average of between 1-2 times a week, depending on the season and her exposures.

22) Ms. Öztürk took steps to mitigate her exposure to her triggers to help with her disease control. For example, she would open windows when she cleaned and she would occasionally wear a mask, and she used cleaning supplies and detergent without fragrance. Ms. Öztürk entered the library early in the morning to avoid foot traffic and exposure to perfumes and other scents. In addition, her friends who know about her condition were cautious about her triggers, including perfume, pets and dust. Ms. Öztürk had variation in her

symptoms, which is typical of asthma, but she was able to manage them effectively with the use of her medications and her avoidance of triggers.

23) Avoidance and mitigation of environmental triggers is a key part of any treatment plan that I create with patients whose asthma is exacerbated by inhaled allergens and irritants.

24) Since Ms. Öztürk has been detained in a crowded congregate setting in Louisiana, she has experienced a steady pattern of worse asthma symptoms, including increased frequency, intensity, and duration of her paroxysms of cough, associated with chest tightness, all of which has required her to use her rescue inhaler far more than her baseline, despite using a daily maintenance inhaler.

25) Based on my conversations with Ms. Öztürk, my understanding is that she had one asthma attack in the airport on the way to Louisiana, and has had 7 additional asthma attacks during the 38 days she has been at the detention center. She states that she has had to take between 2-3 doses of her rescue inhaler for each attack. Ms. Öztürk relayed to me that these attacks have been more intense and they have lasted longer than the attacks that she had prior to her detention. She also said that aside from the asthma attacks, she has separately needed to use her rescue inhaler additional times, far more than she has needed to do in the past.

26) I would describe Ms. Öztürk's experience as a significant change in her asthma condition. Her asthma is no longer well-controlled, and based on the validated Asthma Control Test (ACT), as well as the GINA (Global Initiative for Asthma) Assessment of Asthma Control described above, she has poorly controlled asthma. Ms. Öztürk's score on the ACT was 14, and she answered three of the GINA Assessment of Asthma Control questions as yes. Poorly controlled asthma is one of the most important risk factors for exacerbations (Haselkorn T et al. J Allergy Clin Immunol 2009 Nov;124(5):895-902).

27) This is not a surprising result because Ms. Öztürk is currently enclosed in an indoor space for almost all hours of the day where she is regularly being exposed to dust and strong odors from cleaning products and shampoo—which are known triggers for her— as well as insects and rodent droppings, both notable indoor allergens that can lead to worsening asthma symptoms in many patients. Her living environment is also humid, as the showers are in the same room as the living space and not enclosed, which increases the risk of development of mold, another common inhaled allergen that triggers asthma. According to Ms. Öztürk, she has very limited access to fresh air, and her living space has poor ventilation. Unlike when she lived in Somerville, Ms. Öztürk can no longer remove herself from these environmental triggers or mitigate their effects or regularly adjust and manage her treatment program with her medical care team.

28) It is my opinion that the risk of Ms. Öztürk's condition worsening if she is not released from detention is fairly high. The reason for this risk is that she is experiencing ongoing, static exposure to triggers from which there is no respite. Under these circumstances, there is only so much that her maintenance inhaler and rescue inhaler can do. She is currently managing as best as she can, but it is my opinion that Ms. Öztürk has a real risk of having an asthma exacerbation that would necessitate an urgent evaluation, nebulized medications, oral steroids, and even possibly an emergency room visit.

29) My understanding is that at the detention facility she is currently receiving Pulmicort, which is an inhaled steroid alone and different than what she had been using in Somerville, which was a combination inhaler that included an inhaled steroid and a long-acting bronchodilator. While changing her maintenance medication back to the combination inhaler that she had previously been using might help control her symptoms, it is my opinion that even with this change, Ms. Ozturk would still have a real risk of having an asthma exacerbation that would necessitate an urgent evaluation, nebulized medications, oral steroids, and even possibly an emergency room visit.

30) I have two additional professional concerns about Ms. Öztürk's condition. First, she is sleeping and living in a space that according to public signage is designed for seating capacity of 14 people but is currently detaining 24 people for approximately 22 hours a day. This puts her at greater risk for contracting an upper respiratory infection, which could also lead to an asthma exacerbation.

31) Second, Ms. Öztürk shared that during her first two asthma attacks at the facility, her cellmates needed to bang on the door to try to get someone's attention for assistance, and that it took several minutes before anyone paid attention. She further shared that it took between 20 and 60 minutes between the onset of her asthma attack and when she was seen by a member of the nursing staff during these two incidents.

32) Respiratory status can deteriorate very rapidly in someone with asthma, and it can be life threatening if there is not a quick response. Based on what Ms. Öztürk shared with me, I am concerned that she could decompensate and not receive adequate medical attention in time.

33) Ms. Öztürk also shared that during one of her asthma attacks, a member of the nursing staff at the facility told her that it was "all in her mind". It would be dangerous to ignore a possible asthma attack in someone who is diagnosed with asthma; without proper recognition and treatment, the consequences could be progressively worsening respiratory status and the potential need for emergency care.

34) It is my professional opinion that Ms. Öztürk's condition will not improve if she remains in detention. Without release, she is at risk for progressive symptoms, worsening disease control, and adverse outcomes, including asthma exacerbation requiring acute medical attention which is not easily available to her, and even potentially fatal asthma exacerbation.

35) Based on my review of the medical records and my conversations with Ms. Öztürk, I think there is a high likelihood that her condition would improve, and that her asthma would return to being well-controlled, if she was released and able to return to Somerville.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on May 2, 2025

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Jessica McCannon MD

The Faculty of Medicine of Harvard University

Curriculum Vitae

Date Prepared: April 26, 2025

Name: Jessica McCannon

Office Address: 55 Fruit Street, Boston, MA 02114

Education:

09/1992 - 06/1996	BA	Romance Language and Literature	Princeton University
08/1999 - 09/2000	Post Baccalaureate Program	Pre-Medicine	Bryn Mawr College
08/2001 - 06/2005	MD	Medicine	Weill Medical College of Cornell University

Postdoctoral Training:

2005 - 2006	Intern	Internal Medicine	Massachusetts General Hospital
2006 - 2008	Resident	Internal Medicine	Massachusetts General Hospital
2009 - 2012	Clinical/ Research Fellow	Pulmonary and Critical Care Medicine	Massachusetts General Hospital, Brigham and Women's Hospital, Beth Israel Deaconess Medical Center

Faculty Academic Appointments:

2008 - 2009	Instructor in Medicine	Medicine	Harvard Medical School
2013 - 2021	Instructor in Medicine	Medicine	Harvard Medical School

Appointments at Hospitals/Affiliated Institutions:

2008 - 2009	Assistant in Medicine	Medicine	Massachusetts General Hospital
2013 - 2016	Assistant in Medicine	Medicine (Pulm/CC)	Massachusetts General Hospital
2017 - 2021	Assistant Physician	Medicine (Pulm/CC)	Mount Auburn Hospital

2021 – 2024	Associate Physician	Medicine (Pulm/CC)	Massachusetts General Hospital
2024 - current	Physician (renamed)	Medicine (Pulm/CC)	Massachusetts General Hospital

Major Administrative Leadership Positions:

Local

2016	Site Director, Combined Harvard Pulmonary and Critical Care Fellowship	Massachusetts General Hospital/Beth Israel Deaconess Medical Center
2017 - 2021	Director, Critical Care Services	Mount Auburn Hospital
2020 - 2021	Assistant Medical Director, MACIPA	Mount Auburn Hospital
2021 - Present	Vice Chair, Faculty Development for the Division of Pulmonary and Critical Care	Massachusetts General Hospital

Committee Service:

Local

2011 - 2016	Optimum Care Committee	Massachusetts General Hospital
2015 - 2016	Partners Health Care Palliative Care Committee	Partners Health Care
2016	MGH DOM Community Council	Massachusetts General Hospital
2017 - 2021	Antimicrobial Stewardship Committee	Mount Auburn Hospital
2017 - 2021	Critical Care Committee	Mount Auburn Hospital Co-Chair
2017 - 2021	Infection Control Committee	Mount Auburn Hospital
2017 - 2021	Pharmacy and Therapeutics	Mount Auburn Hospital
2017 - 2021	Rapid Response/Code Blue Committee	Mount Auburn Hospital Co-Chair
2021 - Present	DOM Community Council	Massachusetts General Hospital
2021 - Present	DOM Faculty Advancement Executive Committee	Massachusetts General Hospital
2024 - Present	MGH Frigoletto Committee	Massachusetts General Hospital

Honors and Prizes:

2005	Sarah O'Laughlin Foley Prize	Weill Cornell Medical College	Academic
2005	Paul Sherlock Prize in Internal Medicine	Weill Cornell Medical College	Academic
2005	Gustave J. Noback for Advanced Study and Teaching in the Field of Anatomy	Weill Cornell Medical College	Academic
2005	Leonard P. Tow Humanism Award	Arnold P. Gold Foundation	Academic
2014	Nominated for McGovern Award in Clinical Excellence	Massachusetts General Hospital	Clinical
2020	Nominated for Inspiring Clinician Award	Mount Auburn Hospital	Clinical
2023	MICU Teaching Award	Massachusetts General Hospital	Clinical
2024	Pillar of Excellence Award in the Category of Fostering Community	Massachusetts General Hospital	Clinical

Report of Funded and Unfunded Projects

Past

2008	Understanding Barriers to Completing Advance Care Directives in Two Culturally Diverse Primary Care Settings at Massachusetts General Hospital The John D. Stoeckle Center for Primary Care Innovation ($10,000) Co-Investigator The study sought to better understand knowledge and attitudes about advance directives, barriers to completion, preferences about approaches to end-of-life discussions, and utility of current educational materials available to patients in MGH Chelsea and MGH Revere, using open-ended focus group interviews and structured one-on-one interviews.
2010	A Temporal Intervention Trial of a CPR Video in the ICU Co-Investigator The study employed a video-decision aid that illustrates and discusses elements of CPR. The study compared knowledge of CPR, comfort with the video, and symptoms of anxiety and depression for 50 surrogate decision makers. Importantly, it compared the CPR preferences between the group that viewed the video decision aid and the group that did not view the video.

2012 - 2015	The Conversation Project, a collaboration with the Institute for Healthcare Improvement (IHI) Advisor, Medical Director The Conversation Project is a grassroots public engagement campaign whose goal is to make it easier for individuals to initiate conversations about end-of-life care such that everyone's wishes will be expressed and respected. I have collaborated with thought leaders and have provided medical perspective to this project, and had a leadership role in creating the "Conversation Starter Kit" – a product of the website launched in August 2012, http://theconversationproject.org which has been downloaded by more than 600,000 individuals and is being used widely across the country and around the world (having been translated into many languages) along with other online tools that I also co-authored, including, How To Talk To Your Doctor.
2013 - 2014	A retrospective study of unexpected readmissions to the RACU Co-Investigator The study explored mortality of a high-risk cohort of chronically critically ill patients who have unexpected readmissions to the RACU.
2013 - 2015	Conversation Ready Learning Community Faculty The Conversation Ready Community was a 9-month learning community, comprised of hospitals, health care systems and community organizations from across the country and internationally. This group was committed to establishing what it means for health care organizations to be "Conversation Ready" by piloting tests of change, with the goal of establishing a change package that could be easily adopted by other health systems to improve end-of-life care.
2014	IHI Open School Course: Skills in End-of-Life Conversations Curriculum Developer The IHI Open School is an international community of health care professionals and health care professions students. This 90-minute interactive course introduces health professions students to skills in conversation, particularly with regard to end-of-life care, and focuses on innovative, experiential ways to help learners become comfortable and more skilled at conversations about death and end-of-life care.
2018	ACTS Trial: Ascorbic Acid, Corticosteroids, and Thiamine in Sepsis Funded by Open Philanthropy Project Site PI, Mount Auburn Hospital (BIDMC, Coordinating Center) The "Ascorbic Acid, Corticosteroids, and Thiamine in Sepsis (ACTS)" trial is a multi-center, double-blind, randomized clinical trial that aimed to determine the impact of Vitamin C, Hydrocortisone, and Vitamin B1 vs. Placebo on organ injury and mortality on participants with sepsis and septic shock.

Report of Local Teaching and Training

Teaching of Students in Courses:

2011	Respiratory Pathophysiology HMS 2nd year medical students	Harvard Medical School Simulation and case facilitator
2018 - 2021	Pulmonary pharmacology lecture, Introduction to the ICU, Reflections on COVID Pandemic, as well as preceptor sessions to review history& physical and case presentations HST Students	Massachusetts Institute of Technology

Formal Teaching of Residents, Clinical Fellows and Research Fellows (post-docs):

2015 - 2016	Ambulatory care rotation morning lecture series on asthma Medical interns and residents, MGH	Monthly
2016	MICU morning lecture series on ventilator acquired PNA Medical interns and residents, MGH	
2017 - Present	MICU morning lecture series (Coordination of monthly curriculum for residents rotating through the ICU and lead sessions) Medical interns and residents, MAH	~8 per month
2022 - Present	Ask the expert session on COPD Primary care junior residents, MGH	1-2 times per year

Clinical Supervisory and Training Responsibilities:

2008 - 2009	Ambulatory Clinic Preceptor Precepted general medicine interns in continuity clinics at MGH Revere
2013 - 2016	Pulmonary Clinic Preceptor Provided didactic sessions about outpatient pulmonary medicine and precepted clinics for 2nd and 3rd year pulmonary fellows
2014 - 2016	Ambulatory Pulmonary Rotation Provided one-on-one experience and didactics to residents who rotated through pulmonary clinic at MGH, as well as community-based pulmonary clinics
2021 - Present	Pulmonary Clinic Preceptor Provided didactic sessions about outpatient pulmonary medicine and precepted clinics for 2nd and 3rd year pulmonary fellows

2021 - Present	Ambulatory Pulmonary Rotation Provide one-on-one experience and didactics to residents who rotated through pulmonary clinic at MGH, as well as community-based pulmonary clinics

Formal Teaching of Peers (e.g., CME and other continuing education courses):

☐ No presentations below were sponsored by 3rd parties/outside entities.

☒ Those presentations below sponsored by outside entities are so noted and the sponsor(s) is (are) identified.

2022	Asthma Diagnosis and Management Division of Pulmonary and Critical Care Pulmonary Course Massachusetts General Hospital
2023 - 2024	Asthma Diagnosis and Management CME Course Internal Medicine: Comprehensive Review and Update Harvard Medical School/Massachusetts General Hospital
2024	Asthma Update: New Guidelines and New Choices Primary Care Internal Medicine CME Course Massachusetts General Hospital
2024	Curbside Consults: Top Questions from PCPs on Asthma: New guidelines and new choices. Sponsored by PriMed

Local Invited Presentations:

☒ *No presentations below were sponsored by 3rd parties/outside entities*

☐ *Those presentations below sponsored by outside entities are so noted and the sponsor(s) is (are) identified.*

2009	Adults with Down Syndrome Update/Grand Rounds Department of Genetics, MGH
2012	The Conversation Project MetroWest Medical Center (Natick), Grand Rounds
2013	The Conversation Project (multiple – see below) Harvard Vanguard Medical Associates, Kenmore, Grand Rounds MetroWest Medical Center (Framingham), Grand Rounds

	BWH Ethics, Grand Rounds MGH Palliative Care, Grand Rounds BMC, Palliative Care, Grand Rounds
2014	Best Practices for the Care of Adults with Down Syndrome Department of Nursing Grand Rounds, MGH
2014 - 2015	Updates in the care of patients with COPD Adult Provider Meeting, MGH Chelsea Adult Provider Meeting, MGH Charlestown Adult Provider Meeting, MGH Revere Adult Provider Meeting, Beacon Hill Practice
2016	Updates in the Care of Patients with Down Syndrome MGH Disability Council
2016	Evaluation and Management of Dyspnea MGH Internal Medicine Residency Noon Conference Series
2017	Updates in COPD Mount Auburn Hospital Medicine Residency Noon Conference Series
2017	Palliative Care Discussion Group, Leader The Dr. Andrew Tager Symposium for Those Living with Idiopathic Pulmonary Fibrosis
2020	A Day in the Life of the ICU Mount Auburn Hospital, COVID19 Grand Rounds
2020	COPD Essentials for Primary Care MGH Chelsea Adult Medicine Conference, in honor of Skip Atkins MD
2024	Asthma-New Guidelines and New Choices Harvard University Health Services Grand Rounds

Report of Regional, National and International Invited Teaching and Presentations

☒ *No presentations below were sponsored by 3rd parties/outside entities*

☐ *Those presentations below sponsored by outside entities are so noted and the sponsor(s) is (are) identified.*

National

2012	The Conversation Project / Session Moderator

	Institute for Healthcare Improvement National Forum, Orlando, FL
2013	The Conversation Project / Featured Speaker Annual Palliative Care Symposium, UPMC, Pittsburgh, PA
2013	The Conversation Project / Session Leader Institute for Healthcare Improvement National Forum, Orlando, FL
2014	Learning lab: Having the conversation, professionally and personally Workshop: Becoming Conversation Ready Institute for Healthcare Improvement Office Practice Summit, Washington, DC
2016	COPD: Pathophysiology and Diagnosis, American Thoracic Society Core Lecture Series ATS Annual Conference, San Francisco, CA
2017	Palliative Care Challenges in Advanced Lung Disease Practical Aspects of Palliative Care Symposium

Report of Clinical Activities and Innovations

Past and Current Licensure and Board Certification:

2005	Massachusetts Limited Medical License
2008	American Board of Internal Medicine
2008	Massachusetts Full Medical License
2011	American Board of Internal Medicine, Pulmonary Disease
2012	American Board of Internal Medicine, Critical Care

Practice Activities:

2008 - 2009	Outpatient clinical practice, with some inpatient (general medicine)	Massachusetts General Hospital	Ninety percent effort devoted to provision of urgent care and primary care services at MGH Revere, as well as rounding on health center inpatients.
2008 - 2016	Outpatient clinical practice, Down syndrome	Massachusetts General Hospital	1-2 sessions/month devoted to consultative care for adults with Down syndrome in the MGH Clinic for Adolescents and Adults with Down Syndrome.
2009 - 2016	Outpatient clinical practice, pulmonary	Massachusetts General Hospital	Fifty to eighty percent effort devoted to provision of care in a variety of outpatient settings, both MGH Pulmonary Associates, MGH Chelsea and

			MGH Charlestown community health centers.
2013 - 2016	Critical Care, Pulmonary Consultation, Pulmonary Transplant	Massachusetts General Hospital	Twenty five percent effort devoted to provision of critical care services in a variety of critical care settings (RACU, MICU, CCU) as well as inpatient pulmonary consult service. Typical RACU census is 8-10 patients with chronically critical illness, tracheostomy and prolonged mechanical ventilatory needs. Supervised fellows and NPs. Typical MICU census 8-10 patients with high complexity.
2017 - 2021	Critical Care, Pulmonary Consults, Outpatient clinic	Mount Auburn Hospital	Ninety percent effort devoted to provision of clinical services; 60% inpatient (MICU, SICU, pulmonary consults), 40% outpatient services. MICU patients with high complexity. Supervision of residents, medical students, with daily didactic sessions and simulations (code, line placement).
2021 - Present	Outpatient clinical practice, pulmonary	Massachusetts General Hospital	Thirty five percent effort devoted to provision of care in a variety of outpatient settings, both MGH Pulmonary Associates and MGH Chelsea community health center.
2021 - Present	Critical Care, Pulmonary Consults	Massachusetts General Hospital	Thirty five percent effort devoted to provision of critical care services in a variety of critical care settings (RACU, MICU, CCU) as well as inpatient pulmonary consult service. Typical RACU census is 8-10 patients with chronically critical illness, tracheostomy and prolonged mechanical ventilatory needs. Supervised fellows and NPs. Typical MICU census 8-10 patients with high complexity.

Clinical Innovations:

COPD Community Health Center Outreach (2014 - 2016)	Initiated a multidisciplinary community-based pulmonary clinic first at MGH Chelsea, then MGH Charlestown, as well as a system to identify high-risk COPD patients with prior hospitalizations.
COPD Quality Metrics (2016)	Subspecialist subject matter expert for the early development of Partners-wide quality metrics for COPD.
MGPO Pulmonary - Primary Care Collaborative Pilot (2016)	Identified a cohort of high-risk patients with COPD who did not have established contact with pulmonary subspecialist and piloted a virtual/electronic consultation to increase adherence to guideline-based therapies, appropriate screening.
ICU Huddle (2017)	Piloted a multidisciplinary daily huddle in the ICU to create situational awareness, improve adherence to SAT/SBT protocols, prepare for patient/family needs, and to build community. This huddle has endured and is the cornerstone of the day in the ICU.
MAH Phenobarbital Guideline (2019)	Developed and implemented phenobarbital guideline for alcohol withdrawal in the ICU, in collaboration with critical care pharmacist, and ICU RN leadership. Educated medical staff and housestaff. Ultimately, extended use to SDU to improve ICU capacity.
Watch List (2020)	Established a system for hospital-wide awareness of patients admitted to the medical service with COVID19. This facilitated proactive palliative care consultations when needed, early (and safer) ICU transfers, prevented intubations on the medical floor, and enhanced understanding of critical care capacity needs.
COVID Huddle (2020 – 2021)	Re-purposed our ICU huddle during the pandemic, to include 6 “Ps” – PUI status, PEEP, Proning, Paralysis, Palliative care needs, Plan (procedures, disposition).
Hyperglycemic Emergencies Guideline (2021)	Developed clinical guideline to improve care delivery for patients with hyperglycemic emergencies, in collaboration with critical care pharmacist, ICU RN leadership and medical resident, sharing work with ED and internal medicine residency, to improve initiation of therapy and ongoing management.

Report of Teaching and Education Innovations

Vice Chair for Faculty Development (10/2021 – Present)	As Vice Chair for Faculty Development in the pulmonary and critical care division, developed a many-pronged approach to faculty development, including clinical mentorship, communities of practice, promotions, awards. In this role, piloted variety of approaches to sharing clinical expertise across different division conferences, developed a team approach to promotions, with monthly meetings to review progress of each and every faculty member, identifying faculty at earliest moments of readiness for both clinical/hospital promotions and HMS promotions. Developed an onboarding program for new faculty in the division

and introduced similar programming to the Department of Medicine at MGH. Serve as ombudsman between faculty and leadership.

Report of Education of Patients and Service to the Community

☒No presentations below were sponsored by 3rd parties/outside entities.

☐Those presentations below sponsored by outside entities are so noted and the sponsor(s) is (are) identified.

Educational Material for Patients and the Lay Community:

Books, articles, and presentations in other media

2009	YAI Network (serving people with disabilities and their families)	Gave a presentation in Spanish to families, care providers and other medical professionals about medical issues particular to adults with Down syndrome.
2009	Massachusetts Down Syndrome Congress	Gave a presentation to parents of young children with Down syndrome entitled Health of Individuals with Down Syndrome Across the Lifespan
2012	Care New England	Facilitated a workshop for Care New England's Community Wellness Committee, as part of Advisory role for The Conversation Project, testing out new content and as part of goal to transform work environment into being "Conversation Ready" as part of IHI Conversation Ready Campaign.
2013	Senior Coalition Agenda of Rhode Island	Facilitated a workshop for seniors called Talking to Your Doctor About End of Life Care.

Report of Scholarship

* denotes equal authorship contribution

** denotes mentored trainee.

Peer-Reviewed Scholarship in print or other media:

Research Investigations

1. Temel JS, McCannon J, Greer JA, Jackson VA, Ostler P, Pirl WF, Lynch TJ, Billings JA. Aggressiveness of care in a prospective cohort of patients with advanced NSCLC. Cancer 2008 Aug 15; 113(4): 826-33.
2. Cohen MJ, McCannon JB, MD, Edgman-Levitan S, Kormos WA. Exploring Attitudes Towards Advance Care Directives in Two Diverse Settings. J Palliat Med 2010; 13(12): 1427-32.
3. McCannon J, O'Donnell WJ, Thompson BT, El-Jawahri A, Chang Y, Ananian L, Bajwa EK, Currier PF, Parikh M, Temel JS, Cooper Z, Soylemez Wiener R, Volandes A. Augmenting Communication and Decision Making in the ICU with a CPR Video Support Tool: A Temporal Intervention Study." J Palliat Med. 2012 Dec;15(12):1382-7
4. Lavigne J, Sharr C, Ozonoff A, Prock LA, Baumer N, Brasington C, Cannon S, Crissman B, Davidson E, Florez JC, Kishnani P, Lombardo A, Lyerly J, McCannon JB, McDonough ME, Schwartz A, Berrier KL, Sparks S, Stock-Guild K, Toler TL, Vellody K, Voelz L, Skotko BG. National down syndrome patient database: Insights from the development of a multi-center registry study. Am J Med Genet A. 2015 Nov;167A(11):2520-6.
5. Michaud GC, Channick CL, Law AC, McCannon JB, Antikowiak M, Garrison G, Savah D, Huynh RH, Brady AK, Adamson R, DuBrock H, Akuthota P, Marion C, Dela Cruz C, Town JA, Coruh B, Thomson CC. ATS Core Curriculum 2016, Part IV. Adult Pulmonary Medicine Core Curriculum. Ann Am Thorac Soc 2016 Jul; 13(7):1160-9.
6. Courtwright AM, Robinson EM, Feins K, Carr-Loveland J, Donahue V, Roy N, McCannon J. Ethics Committee Consultation and Extracorporeal Membrane Oxygenation. Ann Am Thorac Soc 2016 Sep;13(9):1553-8.
7. Fan E, Zakhary B, Amaral A, McCannon J, Girard TD, Morris PE, Truwit JD, Wilson KC, Thomson CC. Liberation from Mechanical Ventilation in Critically Ill Adults. An Official ATS/ACCP Clinical Practice Guideline. Ann Am Thorac Soc 2017 Mar; 14(3):441-443.
8. Mehter HM, McCannon JB, Clark JA, Wiener RS. Physician Approaches to Conflict with Families Surrounding End-of-Life Decision-making in the Intensive Care Unit. A Qualitative Study. Ann Am Thorac Soc 2018 Feb;15(2):241-249.
9. Crowley CP, Logiudice RE, Salciccioli JD, McCannon JB, Clardy PF. Initiation and Assessment of Timekeeping Roles During In-Hospital Cardiac Arrests to Track Rhythm Checks and Epinephrine Dosing. Critical Care Explor 2020 Jan 29; 2(1): e0069.
10. Moskowitz A, Huang DT, Hou PC, Gong J, Doshi PB, Grossestreuer AV, Andersen LW, Ngo L, Sherwin RL, Berg KM, Chase M, Cocchi MN, McCannon JB, Hershey M, Hilewitz A, Korotun M, Becker LB, Otero RM, Uduman J, Sen A, Donnino MW; ACTS Clinical Trial Investigators. Effect of Ascorbic Acid, Corticosteroids, and Thiamine on Organ Injury in Septic Shock: The ACTS Randomized Clinical Trial. JAMA. 2020 Aug 18;324(7):642-650.

Other peer-reviewed scholarship

1. Gunther-Murphy C, McCutcheon Adams K, **McCannon J**. Is Your Organization "Conversation Ready"? Healthcare Executive 2013; 28 (4): 62.

2. Reddy KP, **McCannon JB**, Venna N. Diaphragm paralysis in Lyme disease: late occurrence in the course of treatment and long-term recovery. Ann Am Thorac Soc. 2015 Apr;12(4):618-20.

3. Walker A, Rupal A, Jani C, Al Omari O, Singh H, Patel D, Perrino C, **McCannon J**. Longstanding Phenytoin Use as a Cause of Progressive Dyspnea. *Chest*. 2022 Feb;161(2):e91-e96. doi: 10.1016/j.chest.2021.08.079. PMID: 35131079.

4. **McCannon JB**, Shepard JO, Wong AK, Thomas MF, Helland TL. Case 35-2023: A 38-Year-Old Woman with Waxing and Waning Pulmonary Nodules. *N Engl J Med*. 2023 Nov 16;389(20):1902-1911. doi: 10.1056/NEJMcpc2300968. PMID: 37966289.

5. McIntyre AM, Scammell MK, Kinney PL, Khosla K, Benton L, Bongiovanni R, **McCannon J**, Milando CW. Portable Air Cleaner Usage and Particulate Matter Exposure Reduction in an Environmental Justice Community: A Pilot Study. *Environ Health Insights*. 2024 Jun 10;18:11786302241258587. doi: 10.1177/11786302241258587. PMID: 38863688; PMCID: PMC11165963.

Non-peer reviewed scholarship in print or other media:

Reviews, chapters, and editorials

1. McCannon J, Temel J. Comprehensive management of respiratory symptoms in patients with advanced lung cancer. J Support Oncol 2012; 10(1): 1-9.
2. McCannon J, B Kinane. Pulmonary Disorders. The Massachusetts General Hospital Guide to Medical Care of Autism Spectrum Disorder Patients Eds. E. Hazen, C. McDougle. Springer 2018.
3. McCannon J, Zeidman J. Pulmonary Disorders. Pocket Primary Care Notebook Series, second edition. Eds. M. Kiefer, C.Chong, Wolters Kluwer 2018.

Abstracts, Poster Presentations, and Exhibits Presented at Professional Meetings:

1. J. McCannon, E.C. Huang, M. Vivero, A.R. Letourneau, G. McMahon, H.G. Rennke, F. Marty, E. Robinson, M. Barshak, S. Sharma. Thriving on steroids: an unexpected case of disseminated strongyloidiasis. ATS Case Presentations, 2011.
2. J. McCannon, WJ O'Donnell, BT Thompson, A El-Jawahri, et al. Augmenting Communication and Decision Making in the ICU with a CPR Video Support Tool: A Temporal Intervention Study. ATS Poster Session, 2012
3. J. McCannon, P. Currier, R. Berube, L. Tran, H. Lee, W. O'Donnell. Readmissions of the Chronically Critically Ill: A retrospective study of "bounce-backs" and Readmissions to a post-ICU unit. ATS Poster Session, 2013

EXHIBIT 1-I

DECLARATION OF MARIE CAGGIANO, M.D.

I, Marie Caggiano, declare as follows:

1. I am the Medical Director of Student Health Service at Tufts University ("Tufts Health Service"). I have been the Medical Director since April 1, 2020. I am responsible for overseeing the primary healthcare site for undergraduate and graduate students on the Medford/Somerville campus. I am also an Assistant Professor of Medicine at the Tufts University School of Medicine in Boston, Massachusetts.

2. Before coming to Tufts, I worked as a primary care physician at the Massachusetts Institute for Technology (MIT) for seven years and also served as Chief of Primary Care. I earned my M.D. from Boston University School of Medicine and completed my residency training in family medicine, fellowship in preventive medicine, and a Masters in Public Health from the University of Massachusetts.

3. As the Medical Director at Tufts Health Service, I have personal knowledge of the contents of this declaration, or have knowledge of the matters described in this declaration based on my review of information and records gathered by Tufts University personnel, and could testify thereto.

4. Tufts Health Service offers both in-person and telehealth appointments for acute illness or injury, management of chronic disease management (such as asthma), routine healthcare and urgent care needs. Tufts Health Service is centrally located on Professors Row, which is a short walk from most residence halls and classrooms, with ample, accessible street parking. Tufts Health Service is open year-round (including during the summer), five days a week, during most normal business hours. Telehealth appointments are available in the evenings, Monday through Friday, from 5 p.m. to 7 p.m. When the Health Service is closed

(weekends and holidays), students can access after-hours care including nurse triage and clinician on call services.

5. With Ms. Öztürk's permission, I can share that she utilized Tufts Health Service for ongoing management of asthma and a chronic eye condition, both of which required medication. To help ensure the accuracy and completeness of my submission, I spoke with the other providers at Tufts Health Service who treated Ms. Öztürk most frequently. I also reviewed Ms. Öztürk's medical record, which included treatment and exam notes, prescriptions, communications with providers, and visits that spanned from March 17, 2021 through February 26, 2025.

6. Ms. Öztürk was first treated for asthma at Tufts Health Service on July 11, 2023, concurrent with a COVID-19 infection. During that visit, Ms. Öztürk reported that she had been previously diagnosed with asthma and was using previously prescribed medications including a maintenance inhaler and a rescue inhaler to treat her symptoms.

7. A Tufts Health Service provider counseled Ms. Öztürk on continued use of asthma medication, recommended increasing the frequency of use of the rescue inhaler, and prescribed additional medication to ensure that she had an adequate supply. The provider also scheduled a follow-up appointment for continued monitoring of her symptoms given the severity of the respiratory issues she described she was experiencing and her providers' concern that symptoms could worsen if not treated effectively.

8. Following her viral infection in July, Ms. Öztürk continued to experience symptoms related to asthma for the next two months. During that time, Ms. Öztürk was in regular communication with Tufts Health Service and took appropriate and proactive steps to manage her chronic condition through follow-up appointments and timely prescription refills.

The initial exacerbation of Ms. Öztürk's asthma followed by her prolonged recovery posed significant health risk during this period and it was important that she was able to remain in close contact with her provider.

9. By September 2023, Ms. Öztürk reported that she was feeling better and asked her provider about continued use of her maintenance inhaler. Her provider advised Ms. Öztürk that she could try to begin to taper her use of the maintenance inhaler but that if her symptoms persisted she should continue using her maintenance inhaler and that they would continue to follow her progress.

10. In September 2024, Ms. Öztürk again reached out to Tufts Health Service requesting a refill of her maintenance inhaler, which her provider refilled for her.

11. Tufts Health Service did not treat Ms. Öztürk for any another asthma exacerbation, though she appropriately sought care from Tufts Health Service for other medical concerns and communicated with her providers throughout her time at Tufts. Based on my review of these communications and the overall medical record, it appears that her asthma remained in good control with as-needed use of her prescribed inhalers.

12. With Ms. Öztürk's permission, I can share that her providers at Tufts Health Service assessed her asthma to be well-managed overall while she was at Tufts, with the exception of her July 2023 exacerbation which coincided with a viral infection.

13. When Tufts Health Service became aware of Ms. Öztürk's detention in Louisiana her providers were concerned about her health and discussed whether she would have access to her asthma medications and continued treatment for this chronic condition. Her providers also identified that in a congregate living setting, the risk of asthma exacerbation and asthma

complications would be increased due to Ms. Öztürk's inability to isolate herself from sick people or avoid other environmental triggers.

14. If Ms. Öztürk is released from detention and able to return to Tufts, her providers would welcome the opportunity to resume her care at Tufts Health Service. Upon her return, Tufts Health Service will be able to provide Ms. Öztürk with regular access to healthcare, medication and a controlled environment in which she will be able to limit her exposure to viral infection and other potential environmental triggers.

15. I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 1, 2025, at Tufts University.

MARIE CAGGIANO, M.D.