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-wks

PETITIONER'S OPPOSITION TO GOVERNMENT'S MOTION FOR CONTINUED STAY

Petitioner Rümeysa Öztürk has been detained for four weeks for writing an op-ed in a student newspaper. The government's request for a further stay of this Court's opinion and order returning Ms. Öztürk to this District—and, as a consequence, the potential postponement of the Court's hearing dates for her motion for release on bail and her habeas petition—should be denied. First, the government is not remotely likely to succeed on the merits, as this Court has already found. The Court has already rejected the government's arguments that this Court lacks habeas jurisdiction and that review is barred by the Immigration and Nationality Act ("INA"). And the government's arguments about the Court's authority to facilitate its proceedings by bringing Ms. Öztürk, who will remain in detention, closer to her lawyers and the Court also fail. Second and third, only one party—Ms. Öztürk—would suffer *any* harm from a stay, and that harm is irreparable. By contrast, the government suffers no harm at all by holding Ms. Öztürk in detention in Vermont instead of Louisiana and being compelled to justify her continued detention. And fourth, the public interest strongly favors proceeding to the adjudication of Ms. Öztürk's urgent bail request and her habeas corpus petition, as every continued day of her

detention further accomplishes the unconstitutional object of the government's actions, confounds the purpose of the Great Writ, and risks undermining the public's confidence in the executive branch and the ability of the judiciary to hold it accountable for its wrongdoing.

As the Supreme Court has explained, a stay pending appeal represents an "intrusion into the ordinary processes of administration and judicial review[.]" *Nken v. Holder*, 556 U.S. 418, 427 (2009) (quotation marks omitted). An application for a stay is evaluated under a multi-factor test akin to a motion for preliminary injunction. *See, e.g., id.* at 434. That test encompasses four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id*. at 426 (cleaned up).

First, the government is not likely to prevail on the merits.

As this Court already explained at length, it has habeas jurisdiction over the petition pursuant to the plain text of a federal transfer statute (28 U.S.C. § 1631), the clear legal rules concerning habeas jurisdiction (the district of confinement and immediate custodian rules, *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004)), and longstanding precedent regarding the movement of habeas petitioners (*Ex parte Endo*, 323 U.S. 283 (1944)). *See* Op. 15–29; *see also* ECF 81 at 3–14. As the Court pointed out, the government is unable to "cite any authority holding that § 1631 cannot cure a habeas petitioner's failure to file a petition in the correct district." Op. 18. Further, the Court's holdings are consistent with those of three other district courts in recent weeks. *See Khalil v. Joyce (Khalil D.N.J.)*, No. 25-cv-01963, 2025 WL 972959, at *14–38 (D.N.J. Apr. 1, 2025); *Khalil v. Joyce (Khalil S.D.N.Y.)*, No. 25-CV-1935, 2025 WL

849803, at *11–14 (S.D.N.Y. Mar. 19, 2025); *Ozturk v. Trump (Ozturk Mass.)*, No. 25-CV-10695, 2025 WL 1009445, at *4–11 (D. Mass. Apr. 4, 2025).

Next, the Court has jurisdiction over the petition notwithstanding the government's contrary arguments under the INA. As the Court held, "none of" the INA's various jurisdiction-channeling "provisions limit the Court's review where Ms. Ozturk has raised constitutional and legal challenges to her detention that are separate from removal proceedings." Op. 29; *see* Op. 29–43; *see also* ECF 81 at 20–32. The Court explained that the foundational Suspension Clause case law and other "binding precedent" foreclosed the government's arguments, Op. 30–31, because "[t]he claims for relief before this Court do not challenge Ms. Öztürk's removal proceedings," Op. 36. And the Court concluded that the government's extreme arguments, which amount to a bid for a "practically limitless, unreviewable power to detain individuals for weeks or months, even if the detention is patently unconstitutional," Op. 43, "has no precedent in this Circuit or at the Supreme Court," Op. 41.[1]

Next, the government argues that the Court lacks power under the All Writs Act, 28 U.S.C. § 1651, to order Ms. Öztürk's transfer to Vermont to facilitate her participation in courtroom proceedings. These arguments are without merit. The Court has determined that Ms. Öztürk's return to Vermont "is in the interest of justice because transfer would assist the Court's

[1] The Court has already made clear that Ms. Öztürk's constitutional claims are, at least on the current record, likely meritorious. The Court determined that the evidence submitted by Ms. Öztürk "supports her argument that the government's motivation or purpose for her detention is to punish her for co-authoring an op-ed" and that "[t]he government has so far offered no evidence to support an alternative, lawful motivation or purpose for Ms. Ozturk's detention." Op. 48. The Court invited the "immediate submission" by the government of any evidence of "additional justifications for the government's actions," noting that, without such submissions, it would be "likely to conclude that Ms. Ozturk has presented a substantial claim," one of the requirements for release on bail. *Id.* at 47, 57–58, 62.

exploration of the important constitutional questions in this case, would allow the Court to conduct appropriate fact-finding including to support a potential bail hearing, and would otherwise have no impact on removal proceedings." Op. 66; *see id.* at 66–68. "[T]he powers conferred by the All Writs Act . . . are utilized in extraordinary circumstances" like these, "where equitable measures are required to facilitate adjudication . . . or peripheral aspects of habeas adjudication." *Byrd v. Hollingsworth*, No. CIV.A. 14-6473, 2014 WL 6634932, at *2 (D.N.J. Nov. 21, 2014), *aff'd sub nom. Byrd v. Warden Fort Dix FCI*, 611 F. App'x 62 (3d Cir. 2015) (*citing Boumediene v. Bush*, 553 U.S. 723, 774 (2008), in turn citing *Harris v. Nelson*, 394 U.S. 286, 299–300 (1969)); *see, e.g.*, *Michael v. INS*, 48 F.3d 657, 664 (2d Cir. 1995) (exercising All Writs Act authority to preserve appellate jurisdiction over habeas petition concerning potential deportation). The Court also possesses "inherent power," of a "constitutional dimension," that "permits the court to maintain a party's access to the court and preserve the court's ability to adjudicate the case fully and fairly." *Ragbir v. United States*, No. 2:17-CV-1256-KM, 2018 WL 1446407, at *1 (D.N.J. Mar. 23 2018); *see Bounds v. Smith*, 430 U.S. 817, 824 (1977) (holding that Constitution guarantees litigants "meaningful access to the courts"); *Johnson v. Avery*, 393 U.S. 483, 485 (1969) (particularly true in habeas cases) ("Since the basic purpose of the writ is to enable those unlawfully incarcerated to obtain their freedom, it is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed."). Though the government argues otherwise, "[o]rdinarily this would not be controversial; if the item in controversy were not a human being but a valuable painting, few

would quarrel with an order that the artwork be kept within the jurisdiction while the case is pending." *Ragbir*, 2018 WL 1446407, at *1.[2]

Second, the government will suffer no harm from being compelled to comply with the Court's order. The government claims that it automatically suffers harm because it cannot "effectuate[]statutes." ECF 106 at 5 (citations omitted). But it ignores that this Court's opinion does effectuate federal statutes—in particular the All Writs Act and the habeas statute. As the Court pointed out, "[t]he government has so far offered no evidence to support an alternative, lawful motivation or purpose for Ms. Ozturk's detention." Op. 48. Being compelled—a month into a detention that is by every single indication patently unconstitutional—to justify its actions does not harm the government in any way. Under the limited relief ordered by the Court's opinion, Ms. Öztürk will remain in ICE custody pending her bail hearing. The government makes no specific argument to suggest that the location of that custody being in Vermont harms its interests. *See* Op. 72 ("This equitable relief, ordered under this Court's inherent habeas power," will help preserve the status quo at the time Ms. Öztürk filed her habeas petition and

[2] Though Petitioner has not yet had the opportunity to brief the issue in this case, neither 8 U.S.C. § 1231(g) nor § 1252(a)(2)(B)(ii) bar transfer, ECF 103 at 5, where Ms. Ozturk's detention in Louisiana does not stem from any discretionary decision, but rather Respondents' retaliatory arrest of Ms. Ozturkfor engaging in First Amendment activity and Respondents' attempt to interfere with this Court's jurisdiction by transferring her to Louisiana. As the government concedes, section 1252(a)(2)(B)(ii) is narrowly limited to "exercises of discretion." ECF 103 at 4*; see Kucana v. Holder*, 558 U.S. 233, 251 (2010). But the government's actions raise profound questions of constitutionality, *see* Op. at 2, and "the extent of that authority is not a matter of discretion." *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001); *see also Ragbir*, 923 F.3d 53, 73 (2d Cir. 2019) (retaliatory arrest and placement in removal proceedings violated his First Amendment rights), *cert granted, judgment vacated on other grounds sub nom. Pham v. Ragbir*, 141 S. Ct. 227 (2020). And even if Mr. Ozturk was not raising grave constitutional violations or concerns to the integrity of this Court's jurisdiction, section 1252(a)(2)(B)(ii) would still not preclude Ms. Ozturk's transfer because it applies only to those decisions where Congress has "set out the Attorney General's discretionary authority in the statute," *see Kucana*, 558 U.S. at 247, which 8 U.S.C. 1231(g) does not do, *see Aguilar v. U.S. Immigr. & Customs Enf't Div. of Dep't of Homeland Sec.*, 510 F.3d 1, 20 (1st Cir. 2007)

"ensure continued respect for orders issued by Article III courts . . . without disadvantaging the government.").

Third, keeping Ms. Öztürk away from this Court and her lawyers during the pendency of her habeas claims and the upcoming hearings in this Court on her petition and other motions for relief would irreparably harm her. Op. 66–68. Ms. Özturk has been detained for four weeks for co-writing an op-ed in a college newspaper. Had this occurred in any other country, Americans would shudder at the thought, and thank the Founders for drafting the Constitution. The Court has ordered a reasonable and fair schedule for the prompt adjudication of her claims, and further delay of that schedule—enabling the government to continue avoiding the need to justify its actions—would cause significant and serious harm to her and would defy the very purpose of the Great Writ.[3]

Fourth and finally, a denial of the government's stay motion is manifestly in the public interest. The Supreme Court has emphasized that "the writ of habeas corpus is itself an indispensable mechanism for monitoring the separation of powers," and that "the test for determining the scope of this [remedy] must not be subject to manipulation by those whose power it is designed to restrain." *Boumediene,* 553 U.S. at 765–66. The government's position in this case challenges these principles. To stay the Court's proceedings would profoundly compromise public faith in not only the habeas remedy, but in the judiciary's truth-seeking

[3] Moreover, the government's argument that Ms. Öztürk would suffer no harm from a stay because she "lacks status" and must remain detained during the pendency of her habeas petition, ECF 106 at 6, is incorrect. But the revocation of a visa does not affect one's legal immigration status. *See* Guidance Directive 2016-03, 9 FAM 403.11-3 – VISA REVOCATION (Sept. 12, 2016), available at www.steptoe.com/a/web/6208/2016-03-Guidance-Directive-Visa-Revocation-FINAL-Sept-2016.pdf. And as the Court's opinion and its scheduling of a bail hearing indicates, her request for release from custody—though not ordered at this point—remains pending and is available relief.

function. That is particularly true here, where every continued day of Ms. Öztürk's detention further accomplishes the unconstitutional object of the government's actions.

CONCLUSION

For the foregoing reasons, the government's motion to further stay proceedings should be denied.

Respectfully submitted,

/s/ Lia Ernst
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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
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**
Shezza Abboushi Dallal*
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
shezza.dallal@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

Counsel for Petitioner

**Pro hac vice application forthcoming*
***Admitted to appear pro hac vice*