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

BADAR KHAN SURI

Petitioner-Plaintiff,

v.

DONALD TRUMP, *et al.*,

Respondents-Defendants.

Case No. 1:25-cv-00480-PTG-WBP

PETITIONER'S MEMORANDUM IN OPPOSITION TO

RESPONDENTS' MOTION TO DISMISS OR TRANSFER VENUE

INTRODUCTION

Respondents' policy of apprehension, arrest, clandestine transfer and detention of students and scholars with the sole purpose of silencing speech, punishing association, and interfering with religious exercise is now clearly apparent. As part of this policy, Respondents intentionally hunt down noncitizens, secretly and swiftly transfer them from location to location to deliver them to a perceived favorable legal forum while systematically eliminating the individual's access to their community, family and, crucially, their legal counsel. Respondents now ask this Court to condone that strategy by dismissing this case or transferring it to their preferred forum.[1] Based on the law and principles established to protect the right of access to the Great Writ, neither dismissal nor transfer is available or warranted in this case, and the Court should deny Respondents' motion.

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[1] Respondents also argue in a footnote that the underlying claims in this case are barred by various provisions of the Immigration and Nationality Act, specifically Sections 1226(e), 1252(a)(2)(B)(ii), and 1259(b)(9). ECF 26 at 4, n. 2. Respondents then forgo these arguments, instead focusing the entirety of their memorandum on whether venue is proper and whether this Court has jurisdiction over the habeas petition. As Dr. Khan Suri detailed in his replies to Respondents' oppositions to his motion to compel his return to this district, ECF 35, and his motion for release on bond, ECF 36, these statutory provisions do not bar this Court's review or Petitioner's requested relief. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (finding that "Section 1226(e) contains no explicit provision barring habeas review, and…its clear text does not bar [a petitioner's] constitutional challenge" to the legality for their detention); *Reyna ex rel. J.F.G. v. Hott*, 921 F.3d 204, 209-10 (4th Cir. 2019) ("we conclude that §1252(a)(2)(B)(ii) does not strip courts of jurisdiction to review transfer decisions."); *E.O.H.C. v. Sec'y United States Dep't of Homeland Sec.*, 950 F.3d 177, 191 (3d Cir. 2020) ("challenge[s] [to] the extent of the [Secretary's] authority under [a] . . . statute" are not barred by 1252(a)(2)(B)(ii) because "the extent of that authority is not a matter of discretion."); *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018) (plurality) (holding that § 1252(b)(9) does not present a jurisdictional bar when a detained noncitizen seeks relief that a court of appeals cannot meaningfully provide on petition for review of a final order of removal). This Court has the inherent authority to order the relief Petitioner seeks, and none of these statutory bars apply to Dr. Khan Suri's challenges to his detention.

FACTUAL BACKGROUND

Petitioner Badar Khan Suri was born in India, is a practicing Muslim, and came to the United States in December 2022 on a J-1 visa as a visiting scholar and postdoctoral fellow at Georgetown University. ECF 34 at ¶ 7. Prior to his arrest and detention, Dr. Khan Suri was an adjunct professor teaching a course on Majoritarianism & Minority Rights in South Asia. *Id.* He is married to a U.S. citizen, with whom he has three young children. *Id*. Dr. Khan Suri has now been separated from his family for almost a month due to his current detention.

The Policy and Rubio Determination

Respondents, officials and agents of the United States government, have established a policy ("the Policy") of retaliating against and punishing noncitizens who they perceive to be supportive of Palestinian rights or critical of the Israeli government, including because of their protected speech or associations with Palestinians, their national origin and/or their religion. *Id.* at ¶ 47. This policy relies in part on racist and Islamophobic doxxing organizations and social media to identify, aggressively apprehend, secretly detain and then systematically transfer noncitizens far from their families and attorneys in violation of their constitutional rights and long-standing ICE policies and directives. *See id*. at ¶¶ 40-43, 82-91. Respondents proudly proclaim their intention to use the immigration system to punish speech in support of Palestinian rights through family separation, detention, deportation and stripping access to due process and accountability. *Id.* at ¶¶ 3, 4, 47.

Respondents' implementation of this Policy depends in part on the use of ICE to intentionally move noncitizens to far-away detention centers in jurisdictions that Respondents perceive will be more favorable to them. Consistent with this directive, at least three other individuals – Mahmoud Khalil, Leqaa Kordia, and Rümeysa Öztürk – were transferred under

similar rushed circumstances from New York, New Jersey, and Massachusetts, respectively, to Louisiana and Texas. *Id.* at ¶ 91.

Dr. Khan Suri's case is yet another example of Respondents' execution of its Policy to silence and punish protected speech and association. As part of Respondents' strategy to implement the Policy, Respondent Rubio purportedly made a determination (hereinafter "Rubio Determination") that Dr. Khan Suri's presence or activities in the United States would potentially compromise a serious United States foreign policy interest.[2] This purported determination was made on the basis of Dr. Khan Suri's protected speech and religion, as well as his wife's protected speech, familial relationships, and national origin. *Id.* at ¶¶ 5, 76.

Dr. Khan Suri's Arrest and Detention

Although they were not required under the Immigration and Nationality Act (INA) to apprehend and detain Dr. Khan Suri in order to initiate removal proceedings against him, DHS made the decision to do so. Around 9:30 p.m. on March 17, 2025, Dr. Khan Suri was on his way home to his apartment in Arlington, Virginia, after attending iftar, when he was approached by masked officers who arrested him. *Id.* at ¶ 56. *See also* Khan Suri Decl. at ¶¶ 2-3 (attached as Exhibit 1). Though Respondents claim Dr. Khan Suri was arrested pursuant to an I-200 Arrest Warrant, ECF 26-1 at ¶ 7, neither he nor his counsel has received any documentation justifying the basis of this arrest.

At the time of his arrest, the arresting ICE agents told his wife, Ms. Mapheze Saleh, that Dr. Khan Suri was being taken to Chantilly, Virginia. ECF 6-1 at ¶ 13. While Dr. Khan Suri was initially taken to ICE's Washington Field Office in Chantilly, he was then moved to no less than

[2] The government has thus far not provided this determination to Dr. Khan Suri's counsel, and counsel has not obtained it from any other source.

three different locations in Virginia over the next twenty-four hours. ECF 34 at ¶¶ 60-63. During the car ride to ICE's Washington Field Office, DHS agents told Dr. Khan Suri that his arrest was related to his "social media" and that "someone high up in the Secretary of State's office doesn't want you here." ECF 34 at ¶ 59. *See also* Khan Suri Decl, at ¶ 7. They also told him that he was going to be deported that day. ECF 34 at ¶ 59. *See also* Khan Suri Decl. at ¶ 8.

While at the Washington Field Office, Dr. Khan Suri was served with a Notice to Appear ("NTA") that indicated that Respondent Rubio had determined that his presence or activities in the United States would have serious adverse foreign policy consequences for the United States, and ordered him to appear before an immigration judge on May 6, 2025. *See* Khan Suri Decl, at ¶ 9; ECF 26-1 at ¶ 7. Contrary to Respondents' assertions, the NTA did not "notif[y] him that he would be detained at the Prairieland Detention Center. . . and that his removal proceedings would take place while at that facility." ECF 26 at 2. Rather, the pre-populated NTA listed Dr. Khan Suri's "current residence" as "1209 Sunflower Ln Alvarado, TX," instead of his actual current residence in Arlington or his then location in Chantilly, Virginia. *See* ECF 26-1 at Exh. 1. The NTA did not indicate why an address in Texas was listed as his current residence or that the address was a detention center. The NTA further ordered him to appear before an immigration judge at: "27991 Buena Vista Blvd, Los Fresnos, Texas 78566. Prairieland Detention Center" seven weeks later – on May 6, 2025. This information is confusing and contradictory: the address given is for the Port Isabel Detention Center, not the Prairieland Detention Center.[3] In fact, when Dr. Khan Suri asked why the document had a Texas address, the officer responded that it was just computer-generated and it might be changed later on. Khan Suri Decl. at ¶ 9.

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[3] These detention centers are located almost 500 miles apart from each other. The Port Isabel Detention Center is located in the Southern District of Texas, and the Prairieland Detention Center is in the Northern District of Texas.

The officer who served Dr. Khan Suri the NTA was clear that, notwithstanding anything written on his NTA, he would be detained in *Virginia*, either in Farmville or closer to his family. Khan Suri Decl. at ¶¶ 12, 14. The officer then allowed Dr. Khan Suri to call his wife to inform her that he was being taken somewhere three hours away, and this information was later relayed to Dr. Khan Suri's attorney. *Id.* at ¶ 13. *See also* ECF 6-1 at ¶ 14.

Dr. Khan Suri was then driven to the Farmville Detention Center and placed in a cell where he understood he would be detained for an extended period of time. Khan Suri Decl. at ¶ 14. However, after a few hours, he was taken out of his cell and driven to what he thought was Richmond, Virginia, but which ICE Deputy Field Office Director Joseph Simon asserts was an ICE field office in Chesterfield, Virginia. ECF 26-1 at ¶ 11. Dr. Khan Suri believed he had been moved to Richmond to be closer to his family but was not told why he had been brought there. Khan Suri Decl. at ¶ 15. He asked to call his wife to update her with his new location, but his request was denied.

Hours later, without any notice to him or his wife, he was put in a van and driven away again. He did not know and was not told where he was going. *Id*. at ¶ 16. After arriving at an airport, Dr. Khan Suri was put on an airplane without notice of where he was being taken and without reassurance that he was not being deported. *Id*. at ¶ 17. Dr. Khan Suri was afraid he was on a deportation flight out of the country. Even upon landing, he did not know where he was, although he was eventually able to gather that he was in Louisiana. *Id*. at ¶ 18. Compared to ICE's normal practice in detaining noncitizens at Farmville, Dr. Khan Suri was transferred out of Farmville and away from Virginia unusually quickly. *See* Schmelze Decl. at ¶¶ 4-5 (attached as Exhibit 2); ECF 35-2 ¶¶ 5-6.

Filing of Habeas Petition and Time in Louisiana and Texas

Dr. Khan Suri's legal team filed his original habeas petition on March 18, 2025 at 5:59 p.m. Eastern Time. ECF 21-1 at ¶ 8. At that time, ICE's online detainee locator did not show any location for Dr. Khan Suri. ICE did not update the online locator with Dr. Khan Suri's location until March 19, when it showed that Dr. Khan Suri was detained at the Alexandria Staging Facility ("ASF") in Alexandria, Louisiana. ECF 21-3; ECF 21-1 at ¶ 9. The ASF is run by The GEO Group, Inc., a private company that contracts with ICE to provide "a detention and removal staging facility" that "serve[s] as a 72-hour holding facility." *Alexandria Staging Facility*, THE GEO GROUP, INC., https://www.geogroup.com/facilities/alexandria-staging-facility/ (last visited Apr. 15, 2025).

Though the government alleges precise times to show when and how Dr. Khan Suri was transported multiple times by air and land to other ICE field offices (e.g., "He arrived at the office [Chesterfield] at approximately 7:50 a.m."), it gives no indication of if or when Dr. Khan Suri's custody was transferred to the ASF. *See* ECF 26-1 at ¶ 11. According to ICE Deputy Field Office Director Joseph Simon, Dr. Khan Suri's flight departed Richmond, Virginia at 2:47 p.m. on March 18, and "arrived" in Louisiana at "approximately" 5:03 p.m. Eastern Daylight Time – less than an hour before Dr. Khan Suri's habeas petition was filed. ECF 26-1 at ¶ 11. Mr. Simon's declaration is silent as to when Dr. Khan Suri was booked or processed at the ASF. *See id.* According to Dr. Khan Suri, he was not processed or booked at the ASF until several hours after the plane landed, either late the night of March 18, or early in the morning of March 19, 2025. Khan Suri Decl. at ¶ 18.

After arriving in Louisiana, Dr. Khan Suri was not able to make a phone call to his wife until the evening of March 19th. Even then, he was not able to speak to her but could only send a

brief recorded message. *See* ECF 6-1 at ¶ 15; Khan Suri Decl. at ¶ 19. His legal team received the first confirmation of his location in Louisiana from his wife after she received this message. *Id*.

On the night of Thursday, March 20th, an officer told Dr. Khan Suri that he and two other men were going to be transferred to New York the next day, which he believed meant he was being deported. Khan Suri Decl. at ¶ 21. Though Dr. Khan Suri was not aware of it, that evening, this Court issued an order prohibiting Dr. Khan Suri's removal from the United States unless and until it issues a contrary order. ECF 7. The next morning, on March 21st, Dr. Khan Suri was suddenly informed that he was being sent to a detention center in Texas without any additional information. Khan Suri Decl. at ¶ 22. He was then driven to the Prairieland Detention Center in Alvarado, Texas, where he arrived that day. *Id.* Despite relentless efforts to find, track, and contact Dr. Khan Suri, legal counsel was only able to have their first confidential attorney-client call with him on March 25th, seven full days after he was first arrested and several days after he arrived at the Prairieland Detention Center. ECF 21-1 at ¶ 10.

LEGAL STANDARD

The question of proper location for filing of a habeas petition is best understood as a question of either personal jurisdiction or venue. *Kanai v. McHugh*, 638 F.3d 251, 258 (4th Cir. 2011); see *also id*. at 257 (explaining that "a majority of the Supreme Court plainly rejected a subject-matter jurisdiction analysis" in *Rumsfeld v. Padilla*); *Fisher v. Unknown*, No. 23-7069, 2024 WL 5135610, at *1 (4th Cir. Dec. 17, 2024) (holding that district court erred in dismissing § 2241 habeas petition for lack of subject matter jurisdiction). Under the Federal Rules of Civil Procedure,[4] when a plaintiff is responding to a motion to dismiss for lack of personal jurisdiction

[4] This Court may apply the Federal Rules of Civil Procedure in this case. *See* Fed. R. Civ. P. 81(a)(4) (FRCP applies to habeas proceedings "to the extent that the practice in those proceedings: (A) is not specified in federal statute . . . and (B) has previously conformed to the practice in civil

or improper venue without the benefit of an evidentiary hearing, the plaintiff need only make a *prima facie* showing of jurisdiction. *Combs v. Bakker*, 886 F.2d 673, 676 (4th Cir. 1989). In determining whether a plaintiff has made this showing, the court must view the allegations and available evidence in the light most favorable to plaintiff. *Grayson v. Anderson*, 816 F.3d 262, 268 (4th Cir. 2016).

ARGUMENT

Venue is proper in the Eastern District of Virginia and this Court has jurisdiction over Petitioner's habeas petition and complaint. Habeas is the most "adaptable" remedy in American law. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). And as the critical exceptions to the default habeas jurisdictional rules in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), suggest, it simply cannot be that the government may detain a person, keep their counsel, family, and friends from knowing where they are being held, look on as that counsel timely files a habeas petition challenging their unlawful detention in the only place the detainee was known to be, move the detainee 1300 miles away, end up in the venue the government intended to manufacture all along, all while defeating the ability of the detainee to maintain their original habeas petition.

The Framers who codified habeas corpus in essentially the form in which it exists today modeled it on England's Habeas Corpus Act of 1679. *See Boumediene*, 553 U.S. at 742. That Act, in turn, was specifically meant to counter practices that de facto threatened access to the writ, in ways that reverberate today through this case: "Prisoners were moved from gaol to gaol so that it was impossible to serve the proper gaoler with the writ and some prisoners were removed overseas

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actions."); *see also Wise v. Stansberry*, No. 2:10-cv-605, 2011 WL 6960815, *3 n.1 (E.D. Va. Dec. 22, 2011) (noting that while the Federal Rules of Civil Procedure do not necessarily apply to all habeas proceedings, the court had previously exercised its discretion to apply them to Section 2241 petitions). Respondents implicitly acknowledge this by bringing their motions under Fed. R. Civ. P. 12(b)(2) and (3).

so giving rise to practical difficulties in terms of communication (between the detained person and those acting on his behalf), service (on the relevant gaoler), and enforcement of the writ (by production of the detained person) if the writ was issued." Br. for the Commonwealth Lawyers Ass'n as Amicus Curiae at *6, *Boumediene v. Bush*, Nos. 06-1195 & 06-1196, 2007 WL 2414902 (U.S. Aug. 24, 2007). And it is clear that the writ was never intended to depend on technicalities that could easily be abused by the executive to restrict relief. *See* Stephen I. Vladeck, *The New Habeas Revisionism*, 124 HARV. L. REV. 941, 948 (2011); *see also Holiday v. Johnston*, 313 U.S. 342, 350 (1941).

As discussed below, courts have, in fact, fashioned rules and principles in order to ensure that this fundamental right remains always available, especially where the executive engages in conduct that could interfere with a detainee's ability to seek relief. Those rules and principles apply squarely to this case, and therefore Respondents' motions must be denied.

I. This District has jurisdiction to hear Dr. Khan Suri's habeas claims.

In *Padilla*, the Supreme Court set out the "default rules" in habeas cases—which are derived from the terms of the habeas statute and serve the purpose of preventing forum shopping by petitioners. Those rules provide "that the proper respondent is the warden of the facility where the prisoner is being held" at the time the petition was filed, and that the petition must be filed in the petitioner's district of confinement. 542 U.S. at 436-36, 447. However, the Court explicitly declined to address the question of whether these rules should apply to cases of immigration detention. *Id.* at 435 n.8. Similarly, the Fourth Circuit has yet to rule definitively on that question. *See Palacios v. Sessions*, No. 3:18-CV-0026-RJC-DSC, 2018 WL 6333706, at *4 (W.D.N.C. June 26, 2018), *report and recommendation adopted*, No. 318CV00026RJCDSC, 2018 WL 4693809 (W.D.N.C. Oct. 1, 2018).

Respondents argue that this Court should strictly apply the immediate custodian rule in Dr. Khan Suri's case, asserting that the immediate physical custodian of Dr. Khan Suri is the proper one. However, this rule is inapplicable and unworkable in this case for several reasons: first, because the timeline around Dr. Khan Suri's movements and custody in the hours before and after his habeas petition was filed remains unclear and therefore his immediate custodian at the time the petition was filed was and remains unknown, requiring the application of the unknown custodian rule recognized and endorsed in *Padilla*; second, because even if Dr. Khan Suri were detained at the ASF at the time his petition was filed, the Secretary of the Department of Homeland Security was the proper respondent as his ultimate custodian directing the actions of a contract facility; and third, because, in the event that the Court determines that Dr. Khan Suri's immediate custodian was someone other than one of the named Respondents, the application of the immediate custodian rule would undermine the principles and concerns that led the Supreme Court to adopt that rule.

A. Venue is proper in this District because the immediate custodian at the time of the filing of the habeas petition was and remains unknown.

As the majority in *Padilla* recognized, where "it is impossible to apply the immediate custodian and district of confinement rules" because, for example, "a prisoner is held in an undisclosed location by an unknown custodian," those rules do not apply. 542 U.S. at 450 n.18 (citing *Demjanjuk v. Meese,* 784 F.2d 1114 (D.C. Cir. 1986)); *see also* Hertz & Liebman, 1 Federal Habeas Corpus Practice & Procedure § 10.1 (7th ed. 2015) ("The 'immediate custodian' rule . . . is inapplicable . . . where the prisoner's current whereabouts are unknown."). As Respondents concede in their motion, the Fourth Circuit, like other courts, has applied this universally accepted habeas standard to circumstances where the immediate custodian or location of confinement are unknown to the petitioner or his counsel. *United States v. Moussaoui*, 382 F.3d 453, 465 (4th Cir.

2004); *see also Ali v. Ashcroft*, No. C02-2304P, 2002 WL 35650202, at *3 (W.D. Wash. Dec. 10, 2002) ("A nationwide habeas class with the Attorney General as respondent is appropriate when the location of the putative class members is unclear"); *Khalil v. Joyce*, No. 25-CV-01963 (MEF)(MAH), 2025 WL 972959, at *30 (D.N.J. Apr. 1, 2025) ("*Khalil II*") *motion to certify appeal granted*, No. 25-CV-01963 (MEF) (MAH), 2025 WL 1019658 (D.N.J. Apr. 4, 2025) (noting that "the unknown custodian exception is an established part of federal law" that allows the immediate custodian rule to be set aside where the "identity of the immediate custodian is virtually unknowable.").

In such cases, the writ may be properly served on an "ultimate custodian" with power to release the prisoner. *See Moussaoui*, 382 F.3d at 464-65 (holding that if the immediate custodian is unknown, the habeas petition can name an "ultimate custodian" with power to release the prisoner); *Padilla*, 542 U.S. at 439 (explaining that the "identification of the person exercising legal control only comes into play when there is no immediate physical custodian with respect to the challenged 'custody'"); *see also Ming Hui Lu v. Lynch*, No. 1:15-cv-1100, 2015 WL 8482748, at *3 (E.D. Va. Dec. 7, 2015) (recognizing that if an immediate custodian is unknown, the habeas can name an ultimate custodian with power to release); *Khalil II*, 2025 WL 972959, at *26 (allowing petitioner to name Secretary of Homeland Security when immediate custodian was unknown); *United States v. Paracha*, No. 03 CR. 1197 (SHS), 2006 WL 12768, at *6 (S.D.N.Y. Jan. 3, 2006), *aff'd*, 313 F. App'x 347 (2d Cir. 2008); 28 U.S.C. § 2242 (at the pleading stage, requiring the naming of a petitioner's warden "if known").

At the time Dr. Khan Suri filed his habeas petition, his lawyers reasonably believed that he was still in Virginia, where ICE officers had informed his wife he would be taken, and had informed Dr. Khan Suri he would remain. *See* ECF 21-1 at ¶ 8; ECF 6-1 at ¶ 14; Khan Suri Decl.

at ¶¶ 12-14. And Dr. Khan Suri was prevented by the government from providing any information to the contrary until well after the petition was already filed, both because the government's agents failed to inform him where he was or where he was going, and also because they did not permit him any means of contacting his legal counsel. Khan Suri Decl. at ¶¶ 15-17, 19. Nor was his location ascertainable through the ICE online detainee locator, in which Dr. Khan Suri did not appear until March 19. ECF 21-1 at ¶ 9. That Dr. Khan Suri's attorneys acted swiftly to file a petition challenging his detention in the only place they could reasonably file it is sufficient by itself for this District to apply the unknown custodian exception.[5]

But here, not only did Dr. Khan Suri's lawyers have no way to know where he was at the time they filed his petition, but Dr. Khan Suri's immediate custodian at the time of the petition's filing, if not one of the named Respondents, remains unknown *today*. Respondents fail to answer relevant questions as to the timing of Dr. Khan Suri's movements in the hours around the time his petition was filed, and whether he had an immediate custodian at the Alexandria Staging Facility, a private for-profit facility run by The GEO Group, who could have been named as a respondent.

As noted *supra*, the government relies entirely on a declaration from ICE Deputy Field Office Director Joseph Simon in support of its motion.[6] *See* ECF 26-1. But as discussed in detail below, pp. 26-29, Mr. Simon's declaration fails to establish that Dr. Khan Suri's immediate custodian was anyone other than one of the named Respondents. Notably, the declaration is silent as to certain key facts that one would expect to be disclosed in order for the government to establish

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[5] Dr. Khan Suri's original and amended petitions named both his last known custodian (the warden of the Farmville Detention Center) and his ultimate custodian (the Secretary of the Department of Homeland Security).

[6] Petitioner disputes that Mr. Simon's declaration is sufficient to establish any of these facts, as it is deficient under the Rules of Evidence for the reasons stated *infra* pp. 26-29.

who Dr. Khan Suri's immediate custodian would have been. For example, the declaration does not provide any precise time at which the government alleges Dr. Khan Suri was in the custody of the ASF, or who his purported immediate custodian would have been at that time. According to Dr. Khan Suri, he was not processed or booked at the ASF until several hours after his plane landed, either late the night of March 18, or early in the morning of March 19, 2025, when he was finally brought to a room to receive a print-out containing his photo, identification number, and security classification. Khan Suri Decl. at ¶ 18. This roughly corresponds to the first time that his location appeared in the ICE detainee locator. *See* ECF 21-1 at ¶ 9. These omissions by Mr. Simon and the timeline described by Dr. Khan Suri lead to an inference that Dr. Khan Suri was not in fact in the custody of the ASF at the time his habeas petition was filed. S*ee Grayson v. Anderson*, 816 F.3d at 268 (in ruling on motion to dismiss without an evidentiary hearing, courts are required to draw inferences in the light most favorable to the plaintiff).

Respondents argue that Dr. Khan Suri's stay in Louisiana was a "hiatus to another jurisdiction" because he was simply *en route* to Prairieland Detention Facility, and thus he could not have filed his habeas petition there either. ECF 26 at 13-14. They argue that under relevant Fourth Circuit precedent, such a hiatus "does not create a new 'immediate custodian' or change the 'district of confinement' for the purposes of § 2241(a)." *Id.* (citing *United States v. Poole*, 531 F.3d 263, 273-75 (4th Cir. 2008)). But accepting as true that Dr. Khan Suri was merely in transit while in Louisiana, *Poole* does not stand for the proposition that his case should therefore be transferred to his subsequent (and present) location of confinement in the Northern District of Texas. *Poole* was concerned with situations where a prisoner is temporarily "loaned" out to another jurisdiction via an extraterritorial writ of habeas corpus ad testificandum. In such cases, the Fourth Circuit found, the prisoner's "immediate custodian" for purposes of Section 2241 "remains the

original place of incarceration," notwithstanding that the prisoner may be temporarily housed in a different district. *Poole*, 531 F.3d at 271, 275 (emphasis added). The reason for this, the court explained, was to prevent forum shopping by petitioners who were able to secure a hiatus to another jurisdiction and then file a habeas petition in the intervening period. *Id.* at 273.

Here, Respondents cannot reasonably maintain that Dr. Khan Suri was "loaned" out to the Alexandria facility from the Prairieland Detention Center, where he had never yet stepped foot, but where Respondents hoped to bring him for purposes of obtaining a favorable forum. This court should reject Respondents' attempt at forum shopping by subverting a rule aimed at preventing it. And in fact, *Poole* counsels in favor of allowing this District to maintain jurisdiction, because it is the district in which was Dr. Khan Suri's original custodian is located.

Respondents also preemptively argue that *Ex parte Endo*, 323 U.S. 283 (1944), does not help Petitioner because he was moved to Louisiana before the petition was filed, and consequently, this Court never acquired jurisdiction over the petition. The *Endo* rule is bedrock habeas law and provides that, "[t]he fact that a detainee has been transferred far away from a district that otherwise has jurisdiction to hear his or her claims does not necessarily deprive that district of habeas jurisdiction." 323 U.S. at 307. "The objective of habeas relief," the Supreme Court held in *Endo*, "may be in no way impaired or defeated by the removal of the prisoner from the territorial jurisdiction of the District Court." *Id*. (cleaned up and emphasis added). *See also Jones v. Bell*, No. CV CCB-20-2151, 2024 WL 1963971, at *1 (D. Md. May 3, 2024) (quoting *Endo*, 323 U.S. at 306); *Word v. North Carolina*, 406 F.2d 352, 359 (4th Cir. 1969) ("[I]f the words 'within their respective jurisdictions' in § 2241 mean anything more than that the court may act only if it has personal jurisdiction of a proper custodian and the capacity... physical presence of the petitioner within the district is not an invariable jurisdictional prerequisite."). Here, where the application of

the unknown custodian rule means that the ultimate custodian is the proper respondent, and thus the petition was properly filed in this district in the first instance, the *Endo* rule may be applied, and the fact that Dr. Khan Suri was then moved to another jurisdiction does not defeat this Court's jurisdiction to continue to hear the case.

In sum, because Petitioner's attorney could not have been aware of the immediate custodian or district of confinement at the time of filing, and those facts are also not entirely evident today on the record before this Court, it is appropriate to apply the unknown custodian exception to the district of confinement rule to find that this Court has jurisdiction over Dr. Khan Suri's petition. It is all the more appropriate to do so where, as here, the forum-shopping concerns animating the district of confinement rule are not only absent, but, as shown in greater detail below, the opposite is true: application of the district of confinement rule would vindicate Respondents' extraordinary attempts at forum shopping in this case.

B. Even if Dr. Khan Suri were physically located at the ASF at the time of filing, the appropriate respondent is the ultimate custodian.

The Alexandria Staging Facility in Louisiana is a "72-hour holding facility" run by The GEO Group, Inc. under contract with ICE. Respondents fail to identify the person in charge of this privately-run facility, and offer no evidence or suggestion that such person, who is not an employee of the federal government, would have the authority to execute any relief granted by this Court without additional instruction provided by a supervisory government official. In similar cases, courts have found that the immediate custodian rule does not apply, and it is therefore appropriate to name as respondent the Secretary of the Department of Homeland Security and the Attorney General, as Petitioner has done here. *See*, *e.g.*, *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 724–25 (D. Md. 2016) ("The DHS Secretary possesses statutory authority to affect the detention and removal

of noncitizen detainees, and thus, possesses legal authority over Mr. Jarpa. Likewise, the Attorney General possesses complete statutory authority to detain noncitizens, remove convicted noncitizens, and grant or deny any discretionary relief." (citations omitted)); *Calderon v. Sessions*, 330 F. Supp. 3d 944, 952 (S.D.N.Y. 2018) ("[T]he detention facility here is merely providing service to ICE . . . ICE, and only ICE, may authorize release of any detainee."); *Santos v. Smith*, 260 F. Supp. 3d 598, 607–08 (W.D. Va. 2017) (holding that the Director of the Office of Refugee Resettlement is a proper respondent in habeas action challenging minor's continued detention in a contract facility); *Saravia v. Sessions*, 280 F.Supp. 3d 1168, 1185 (N.D. Cal. 2017), *aff'd sub nom*. *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) ("Instead of naming the individual in charge of the contract facility—who may be a county official or an employee of a private nonprofit organization—a petitioner held in federal detention in a non-federal facility pursuant to a contract should sue the federal official most directly responsible for overseeing that contract facility when seeking a habeas writ.").

Dr. Khan Suri named the Secretary of Homeland Security and the Attorney General as Respondents in this action, both of who had the ultimate legal authority over Dr. Khan Suri's detention with the power to release him from the ASF, and effectuate any relief granted by this Court. Accordingly, they would be the appropriate respondents to any habeas petition that Dr. Khan Suri would have filed from the ASF. Because this Court can exercise personal jurisdiction over those officials, it need not dismiss or transfer this petition to any other court.

C. Venue is proper in this District because there are indications that the government moved Dr. Khan Suri out of its district for the purpose of frustrating his lawyer's ability to challenge his confinement.

Application of the default immediate custodian rule is particularly inappropriate in this case in light of the prescient concerns articulated in the concurring opinion in *Padilla v. Rumsfeld*,

where Justice Kennedy, joined by Justice O'Connor, explained that he "would acknowledge an exception [to the immediate custodian rule] if there is an indication that the Government's purpose in removing a prisoner were to make it difficult for his lawyer to know where the habeas petition should be filed, or where the Government was not forthcoming with respect to the identity of the custodian and the place of detention." 542 U.S. at 452 (Kennedy, J., concurring). In such cases, where the government removes a prisoner from a district for such improper purposes:

> habeas jurisdiction would be in the district court from whose territory the petitioner had been removed. In this case, if the Government had removed Padilla from the Southern District of New York but refused to tell his lawyer where he had been taken, the District Court would have had jurisdiction over the petition. Or, if the Government did inform the lawyer where a prisoner was being taken but kept moving him so a filing could not catch up to the prisoner, again, in my view, habeas jurisdiction would lie in the district or districts from which he had been removed.

Id.

The majority and concurrence took pains to ensure that future courts would exercise their habeas authority to address extraordinary circumstances in extraordinary moments, and prevent the grave injustice they imagined, but did not see directly before them, from ever coming to pass. Other courts have seen clearly just what Justice Kennedy meant to do—even as they did not conclude that the kind of extreme case he wrote about was before them. *See, e.g.*, *Vasquez v. Reno*, 233 F.3d 688, 696 (1st Cir. 2000) ("[W]e can envision that there may be extraordinary circumstances in which the Attorney General appropriately might be named as the respondent to an alien habeas petition. . . . An[] example of an extraordinary circumstance might be a case in which the INS spirited an alien from one site to another in an attempt to manipulate jurisdiction."); *Griffin v. Ebbert*, 751 F.3d 288, 290 (5th Cir. 2014) (warning against the potential that the government would "play[] forum games or ke[ep] moving" a detainee "so that his filing could not catch up"); *Sow v. Whitaker*, No. 18 Civ. 11394, 2019 WL 2023752, at *6 (S.D.N.Y. May 8, 2019)

(Lehrburger, M.J.) ("This Court agrees that *Padilla* should not be interpreted so as to condone or encourage misbehavior or deceptive conduct by the Government in transferring immigrant detainees.").

Here, the circumstances of Dr. Khan Suri's removal from the Eastern District of Virginia clearly shows that Respondents' actions were part of a pre-planned scheme undertaken pursuant to an ICE directive to transfer all individuals subject to the Policy to detention centers in the southern United States, far from their families and attorneys, in an effort to thwart jurisdiction in states perceived to be less desirable in defending against challenges to the Policy so that the government could deport them more quickly. ECF 34 at ¶¶ 47, 91. Respondents' actions in the hours and days after his arrest were consistent with such a directive: although they were not required to do so under the INA, and despite Dr. Khan Suri's lack of any criminal record, he was arrested off the street by masked immigration agents, moved rapidly between four locations across Virginia, kept from communicating with his family and counsel, flown out of Virginia within 24 hours of his arrest, and ultimately ended up in the government's preferred forum. *See* Nick Miroff, *There Was a Second Name on Rubio's Target List,* THE ATLANTIC (Mar. 13, 2025), https://tinyurl.com/RubioTargetList (reporting that "[t]wo DHS officials said the government moved him to Louisiana to seek the most favorable venue for its arguments.").

Respondents' alleged justification for Dr. Khan Suri's transfers—that capacity considerations required moving him from Virginia to Texas—is not credible. Respondents indicate that at some undisclosed time or date, "ICE determined that [Dr. Khan] Suri would not be detained in Virginia at the Farmville Detention Center or the Caroline Detention Center" "[d]ue to potential overcrowding in Virginia detention facilities" and because "ICE was operating its Virginia detention facilities at high capacity at the time" of Dr. Khan Suri's arrest. ECF 26-1 at ¶ 8. Yet, on

March 17, 2025, the day of Dr. Khan Suri's arrest, there were almost 300 available beds in two detention facilities in Virginia. *See* ECF 34 at ¶¶ 89-90. ICE reported that the average daily population at Farmville and Caroline was 488 and 284, far lower than their capacities of 732 and 336, respectively.[7] *See* ECF 35-1. Further, according to the Program Director of the Amica Center, whose attorneys provide legal representation to persons detained at the two ICE detention facilities in Virginia, Farmville Detention Center actually accepted new detainees during the same time period that Mr. Simon contends it could not accommodate Dr. Khan Suri, and most remain there as of April 7. ECF 35-2 at ¶ 4.

In contrast, Respondents transferred Dr. Khan Suri from a facility with ample space to an overcrowded one. Khan Suri Decl. at ¶¶ 14, 22. Once he arrived at the Prairieland Detention Center in Alvarado, Texas, Dr. Khan Suri was forced to sleep on a mat and movable plastic cot in the common room for almost two weeks because there was no bed available to him. *See id.* at ¶ 22; ECF 34 at ¶ 67; ECF 21 at 10; ECF 30 at ¶ 5. The capacity of Dr. Khan Suri's current dorm is around 36, but there are consistently more than 50 people housed there. There are always about 15 or more people sleeping on the floor because there are not enough beds. Khan Suri Decl. at ¶ 22.

And rather than tell Dr. Khan Suri clearly that he was to be sent to Texas, beginning with the moment of his arrest, DHS officers repeatedly fed him contradictory and misleading information about whether he was being deported or internally transferred, where he was being taken and how long he would be kept there. For example, soon after his arrest on the way to the

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[7] ICE, Farmville Detention Center, Memorandum of Record (June 6, 2022), https://ica-farmville.com/wp-content/uploads/2022/06/2021-Annual-Review.pdf. ("The facility has 732 general population housing unit beds"); Caroline Detention Facility, Home (2025), https://carolinedf.org/#:~:text=The%20Caroline%20Detention%20Facility%20(CDF,a%20part%20of%20the%20installation. ("The Caroline Detention Facility (CDF) is a 336-bed correctional facility").

Washington Field Office in Chantilly, he was told he would be deported that same night. Khan Suri Decl. at ¶ 8. Then, in Chantilly, an officer served him a pre-populated NTA that incorrectly and confusingly listed an address in Alvarado, Texas as his "current residence," without indicating that the address was a detention center, or that he would be taken there. *Id.* at ¶ 9. Further, it provided conflicting information as to the location—and even the judicial district—of his eventual immigration hearing in Texas on May 6. *See supra* p. 5. Contrary to Respondents' assertion, the NTA did not indicate that Dr. Khan Suri would be detained in either of those locations in Texas or even whether his immigration court hearing would be in-person or remote.[8] To the contrary, the officer who served him the NTA was clear that, notwithstanding anything written on his NTA, he would be detained in *Virginia*, either in Farmville or closer to his family. Khan Suri Decl. at ¶¶ 12, 14. Dr. Khan Suri was then allowed a phone call to relay this incorrect information to his wife, information which was later relayed to Dr. Khan Suri's attorney. ECF 6-1 at ¶ 14; Khan Suri Decl at ¶ 13. Neither the NTA nor the officer who served him the NTA mentioned the possibility that Dr. Khan Suri would instead be traveling to an altogether different detention facility, judicial district, and state, either the Alexandria Staging Facility in Louisiana or the Prairieland Detention Center in Texas. This confusion, whether intentional or not, effectively prevented Dr. Khan Suri from providing accurate information to his wife regarding his whereabouts.

[8] Respondents also claim that the statement in Dr. Khan Suri's initial petition that, "He is at imminent risk of being moved to a detention facility in Los Fresnos, Texas, on the Mexican border" indicates that "he was acutely aware that he would be detained in Texas to attend those proceedings." On the contrary, it further demonstrates that the information provided to him about where he was going, and when, was inaccurate and misleading. As Respondents know, Dr. Khan Suri was never, in fact, taken to a facility in Los Fresnos or anywhere else in the territory of the Southern District of Texas. Thus, even assuming his attorneys were aware of a *risk* that he would be taken to Texas, they had no way to know where, let alone when, such a transfer might take place.

After being served with the NTA at the ICE office in Chantilly, Dr. Khan Suri was driven to the Farmville Detention Center and placed in a cell where he was made to understand he would be detained until he was brought closer to his family. Khan Suri Decl. at ¶¶ 12-14. But then, a few hours later, he was taken out of his cell and driven to what he was told was in Richmond, Virginia, but which ICE Deputy Field Office Director Joseph Simon avers was an ICE field office in the nearby town of Chesterfield, Virginia. ECF 26-1 at ¶ 11. Dr. Khan Suri asked to call his wife to update her with his location, but his request was denied. Khan Suri Decl. at ¶ 15. Several hours later, an officer removed him from his cell yet again and then he was taken to an airport and flown to Louisiana. *Id.* at ¶¶ 16-18.

This rapid-fire movement is extremely unusual compared to recent practice of housing immigration detainees at Farmville Detention Center. Attorneys who regularly represent D.C.-area residents detained there report that the vast majority of those detainees remain at Farmville, and those few that are transferred are only moved after they have already been held at Farmville for months. ECF 35-2 at ¶¶ 5-6; Schmelzel Decl. at ¶¶ 4-5.

The examples of Dr. Khan Suri, Mr. Khalil, and Ms. Öztürk establish a troubling but clear pattern in which Respondents deliberately undermine their constitutional rights through transfers to remote immigration detention centers. Last week, the government openly acknowledged using rapid transfer authority to remove Venezuelans from U.S. jurisdiction before a judge could intervene, stating: "We wanted them on the ground first, before a judge could get the case, but this is how it worked out." Marc Caputo, *Exclusive: How the White House ignored a judge's order to turn back deportation flights,* AXIOS (Mar. 16, 2025), https://www.axios.com/2025/03/16/trump-white-house-defy-judge-deport-venezuelans. This admission underscores the pretextual, irregular, and bad-faith nature of such transfers. These facts reflect a growing, government-acknowledged

practice of using rapid transfers to attempt to evade the jurisdiction of courts they consider unfavorable (or of U.S. courts altogether)—eroding the presumption of regularity that typically warrants judicial deference to the Executive.

II. If the Court finds that it does not have jurisdiction, it should transfer the case rather than dismiss it.

The government asks the Court to dismiss this case if it finds it lacks jurisdiction over Dr. Khan Suri's habeas petition. The government relies on *Poole*, *supra*, to argue that Dr. Khan Suri could not have filed his habeas petition in Louisiana while at the ASF, because his stay there was only temporary while he was in transit to his final destination. ECF 26 at 12-13. Thus, the government argues that dismissal is the only appropriate remedy, unless Petitioner consents to a transfer to the Northern District of Texas. *Id.*

This argument suggests that there was a several-day period where habeas relief was simply unavailable to Dr. Khan Suri – an outcome that is plainly contrary to the principles universally applied to habeas cases. *See Boumediene*, 553 U.S. at 745 (noting that the Suspension Clause "ensures that, except during periods of formal suspension, the Judiciary will have a time-tested device, the writ, to maintain the 'delicate balance of governance' that is itself the surest safeguard of liberty."); *Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist., Santa Clara Cnty., California*, 411 U.S. 345, 350 (1973) ("The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected. Thus, we have consistently rejected interpretations of the habeas corpus statute that would suffocate the writ in stifling formalisms or hobble its effectiveness with the manacles of arcane and scholastic procedural requirements." (internal quotations and citations omitted)); *Khalil II*, 2025 WL 972959, at *37 ("Our tradition is that there is no gap in the fabric of habeas --- no

place, no moment, where a person held in custody in the United States cannot call on a court to hear his case and decide it.").

Should this Court determine that it lacks jurisdiction over Dr. Khan Suri's petition, it should exercise its discretion to transfer the case rather than dismissing it because it is "in the interest of justice." 28 U.S.C. § 1631; *see also Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) ("Section 1404(a) is intended to place discretion in the district court to adjudicate motions for transfer according to an individualized, case-by-case consideration of convenience and fairness." (quotations and citations omitted)). Dismissing the case in order for Dr. Khan Suri to refile in another jurisdiction would pose real risks of harm, in that this Court has entered an order prohibiting his removal from the country. ECF 7. That order is critical to ensuring that Dr. Khan Suri has the opportunity to challenge the lawfulness of his arrest and detention, as well as to pursue any available relief in his immigration proceedings. Further, the need to re-file and re-litigate issues already properly before this Court would impose a delay that would be prejudicial to Dr. Khan Suri by extending his unlawful detention. Finally, Dr. Khan Suri's counsel filed his petition in this Court based on a good-faith and reasonable belief that he was detained here. All of these factors weigh in favor of transfer rather than dismissal. *See Khalil v. Joyce*, No. 25-CV-1935 (JMF), 2025 WL 849803, at *12 (S.D.N.Y. Mar. 19, 2025) ("*Khalil I*") (weighing similar equities of transfer versus dismissal).

Further, transfer to the Northern District of Texas is unavailable without Petitioner's consent, which he does not give. Both 28 U.S.C. §§ 1631 and 1404(a) require that the case might or could have been brought in the court to which the case is transferred. It is undisputed that at the time his Petition was filed, Dr. Khan Suri was not in Texas and had never been in Texas, and therefore he could not have, legally or practically, filed it there. *Khalil I*, 2025 WL 849803, at *14

(“the statutes that govern transfer of civil cases from one federal district court to another dictate that the case be sent...not to the Western District of Louisiana”); *Ozturk v. Trump*, No. 25-CV-10695 (DJC), 2025 WL 1009445, at *11 (D. Mass. Apr. 4, 2025) (rejecting the government’s argument that the case should be transferred to the Western District of Louisiana because “an action may only be transferred to the court where it “could have been brought.”)(quoting 28 U.S.C. §§1406(a), 1631).

Finally, transfer to either Texas or Louisiana would have the effect of ratifying and condoning the government’s intent to select its preferred forum. While the district courts in *Khalil I* and *Öztürk* found that transfer was appropriate to the district where the petitioners were located at the moment of filing, those courts also made clear that those transfers avoided rewarding the government for similar attempts at forum shopping. *Khalil II*, 2025 WL 972959, at *35 (“because as of the time of filing on March 9 the Petitioner's lawyer could not know that the Petitioner was in New Jersey --- does not open the door to forum-shopping.”); *Ozturk,* 2025 WL 1009445, at *10 (“If the purpose of any exception to the place-of-confinement rule is to curb forum shopping by the government, the transfer of this matter to the federal district court in the District of Vermont… does so.”) (internal citation omitted).

Thus, while Petitioner maintains that this Court has jurisdiction over his petition for reasons set out above, if this Court determines otherwise, the equities would favor transfer to an appropriate court rather than dismissal.

III. At a minimum, Petitioner should be entitled to discovery on these issues.

All of the above, and the existing factual record and allegations taken in the light most favorable to plaintiff, *Grayson*, 816 F.3d at 268, establish far more than a prima facie showing that Dr. Khan Suri’s petition and complaint should remain before this Court. But if the Court is still not

persuaded to deny the government's motion, it should allow Petitioner to conduct limited and expedited jurisdictional discovery before deciding that dismissal or transfer is appropriate. *See id.* at 268–69 (noting that where a court requires a plaintiff to establish facts supporting personal jurisdiction by a preponderance of the evidence prior to trial, it must conduct an evidentiary hearing affording the parties a fair opportunity to present relevant evidence and legal arguments, and has broad discretion to receive live testimony or other evidence in the form of depositions, interrogatory answers, admissions or other appropriate forms).

Respondents included only one exhibit to support their facts of Dr. Khan Suri's transfer and detention: the declaration of ICE officer Joseph Simon. ECF 26-1. This declaration appears to be based mainly on hearsay and is too vague to assess its reliability.[9] Inadmissible hearsay may not be offered in support of or opposition to a habeas petition. *See, e.g., Greiner v. Wells*, 714 F.3d 305, 325–26 (2d Cir. 2005); *cert. denied*, 546 U.S. 1184 (2006) (excluding hearsay in a habeas case pursuant to Federal Rules of Evidence). *See also Herrera v. Collins*, 506 U.S. 390, 417–18 (1993) (habeas petitions based on affidavits are disfavored, and hearsay affidavits are "particularly suspect."); *Rosemond v. Hudgins*, 92 F.4th 518, 523 (4th Cir. 2024) (affirming the District Court's decision not to consider the contents of hearsay declarations). The Court should strike and disregard the Simon Declaration to the extent that it contains inadmissible hearsay.

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[9] The Federal Rules of Evidence apply to habeas corpus proceedings. *See* Advisory Committee Notes to Fed. R. Evid. 1101 ("The rule does not exempt habeas corpus proceedings.") (citing *Walker v. Johnson*, 32 U.S. 275 (1941)). *See also Bowling v. Haeberlin*, No. CIV. 03-28-ART, 2012 WL 4498647, at *10 n.1 (E.D. Ky., Sept. 28, 2012) ("[T]he Federal Rules of Evidence apply to habeas corpus proceedings"); *Plaster v. United States*, 720 F.2d 340, 349 (4th Cir. 1983) (same); *Smith v. Brewer*, 444 F. Supp. 482, 489 (S.D. Iowa 1978), *aff'd*, 577 F.2d 466 (8th Cir. 1978), *cert. denied*, 439 U.S. 967 (1978) ("Federal evidentiary rules generally govern in habeas proceedings.") (citing *Walker*, 32 U.S. at 287).

In *Martinez v. Hott*, Judge Alston considered a similar declaration[10] and struck several paragraphs as inadmissible hearsay. 527 F. Supp. 3d 824, 833 (E.D. Va. 2021). *See also D.B. v. Poston*, 1:15-cv-745, Dkt. No. 23 (E.D. Va., July 30, 2015) (Cacheris, J.) (striking similar hearsay affidavit in habeas corpus litigation on behalf of immigrant juvenile detained by Office of Refugee Resettlement); *Julius v. Crawford*, 1:20-cv-1451, Dkt. No. 31 (E.D. Va., May 26, 2021).

Insofar as the Simon declaration purports to provide an evidentiary foundation for the facts averred therein, it does so by means of one paragraph nearly identical to the wording found insufficient in *Martinez*: Mr. Simon states that his declaration is "based on my personal knowledge, reasonable inquiry, and information obtained from various records, systems, databases, and other DHS employees, and information portals maintained and relied upon by DHS in the regular course of business." Even more concerning than in *Martinez*, Mr. Simon does not even purport to be personally involved in managing any aspect of Dr. Khan Suri's case, arrest, detention, or transfer.

Mr. Simon does not distinguish which purported facts are from his personal knowledge or observations; which purported facts are based on documents that he maintains or uses in the ordinary course of business; which purported facts are based on documents that he read or obtained solely in order to prepare his declaration for this litigation; and which purported facts are based on verbal conversations with other individuals within ICE, or the basis for those individuals' personal knowledge. For example, in support of the government's contention that Dr. Khan Suri "had already left this district at the time Petition was filed," Mr. Simon asserts the locations, dates, and times of each of Dr. Khan Suri's transfers while in ICE custody. But Mr. Simon does not specify

[10] An ICE Assistant Field Office Director ("AFOD") submitted a hearsay declaration that was based on "a review of information contained in the alien file of Petitioner, records and databases maintained by ICE, and other documents and physical evidence relevant to Petitioner; [the AFOD's] own personal knowledge and observations during the course of [his] official duties; and information conveyed to [the AFOD] by other law enforcement officials." 527 F. Supp. 3d at 831.

where he obtained this information to "permit[] the Court to assess its reliability." *Sulayman v. Obama*, 729 F. Supp. 2d 26, 35 (D.D.C. 2010) (quoting *Parhat v. Gates*, 532 F.3d 834, 849 (D.C. Cir. 2008)). Thus, the Simon Declaration is wholly insufficient to establish any facts surrounding ICE's decision to detain and transfer Dr. Khan Suri out of Virginia and who had custody of Dr. Khan Suri when his habeas petition was filed.

Further, the Simon Declaration violates the best evidence rule[11] by failing to provide documents referenced in it, including the Rubio determination, a custody determination, and a "Warrant for Arrest of [Noncitizen], Form I-200. ECF 26-1 at ¶¶ 6, 7. *See also Gordon v. Gutierrez*, No. 1:06 CV 861, 2007 WL 30324, at *3 n.14 (E.D. Va., Jan. 4, 2007), *aff'd*, 250 F. App'x 561 (4th Cir. 2007) (Ellis, J.) ("While the affidavit of Randy Myers does purport to offer evidence about plaintiff's docket, some portions thereof are inadmissible insofar as they offer testimony about the contents of documents, such as docket sheets and performance appraisal plans. . . . Since they are inadmissible, those statements are not properly considered on summary judgment."). Mr. Simon does not explain why he did not include any of the documents on which he relied in his filing, nor does he claim inability to access any of the documents whose contents he describes in his declaration. If any written documents underlying Mr. Simon's claim that Dr. Khan Suri's detention was authorized under the INA exist, the best evidence rule mandates that Respondents produce them.[12]

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[11] The Best Evidence rule provides that "[a]n original writing, recording, or photograph is required in order to prove its content unless these rules or a federal statute provides otherwise." Fed. R. Evid. 1002.

[12] Even if there were concerns about the direct evidence containing privileged information, Respondents could have easily filed the direct evidence under seal or even provided it for *in camera* review. "*In camera* review is not a public disclosure of documents. Quite the contrary, it is a highly appropriate and useful means of dealing with claims of governmental privilege." *Scholl v. United States*, 69 Fed. Cl. 395, 396 (2005) (citing *Kerr v. U.S. Dist. Ct.*, 426 U.S. 394, 406 (1976)). As Judge Brinkema noted in striking an almost identical declaration in very similar

In addition to the evidentiary issues inherent in the Simon Declaration, it is vague and contradicted by other evidence before the Court, such that discovery would be appropriate to resolve those factual disputes. For example, the Simon Declaration states that Dr. Khan Suri's transfer out of Virginia was an "operational necessity" "[d]ue to lack of detention space available at the Farmville Detention Center or the Caroline Detention Center," and the availability of space at other detention centers. These allegations are credibly contradicted by evidence that there was in fact detention space available in Virginia. *Supra*, pp. 19-20. Similarly, the Simon Declaration fails to provide any information regarding in whose custody the government believes Dr. Khan Suri to have been at the time his petition was filed—a fact that may be relevant to the ultimate resolution of Respondent' motion.

At the very least, the circumstances of this case raise serious questions about the government's conduct in handling Dr. Khan Suri's detention, and whether Respondents engaged in a coordinated plan to hastily and surreptitiously move Petitioner to Louisiana and then Texas to establish a more favorable forum for themselves and interfere with Petitioner's access to counsel and his counsel's ability to successfully challenge his arrest and detention. And given the stakes, those questions would demand a fulsome examination before an irreversible resolution on the government's motion. *See Khalil I,* 2025 WL 849803, at *11 n. 6 (explaining why "the case for jurisdictional discovery would be stronger" in the context of the New Jersey-to-Louisiana transfer than in the context of the New-York-to-New-Jersey one). Because the interest in swift proceedings is Dr. Khan Suri's, and not the government's, the government will not be prejudiced by a short delay for discovery, and the interests of justice will be served. *See, e.g., Dimension Data N. Am.,*

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circumstances, *in camera* review would have been an appropriate means to deal with any potential privilege concerns instead of asking the Court to rely on evidence that is plainly insufficient. *Julius v. Crawford*, 1:20-cv-1451 (E.D. Va., May 26, 2021), Dkt. No. 32.

Inc. v. NetStar-1, Inc., 226 F.R.D. 528, 531 (E.D.N.C. 2005) (applying a "reasonableness standard" to a request for expedited discovery and citing cases). At a minimum, therefore, this Court should exercise its discretion to give the Petitioner a chance to obtain limited discovery on the question of jurisdiction prior to any decision to transfer or dismiss the case.

CONCLUSION

Respectfully, the Court should deny the government's motion to dismiss or transfer and proceed to deciding the important and urgent issues raised by Dr. Khan Suri's petition and pending motions before the Court.

Dated: April 15, 2025

Respectfully submitted,

s/*Eden B. Heilman*

Eden B. Heilman, VSB No. 93554
Sophia Leticia Gregg, VSB No. 91582
Vishal Agraharkar, VSB No. 93265
Geri Greenspan, VSB No. 76786
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF VIRGINIA
P.O. Box 26464
Richmond, VA 23261
Tel: (804) 523-2152
eheilman@acluva.org
sgregg@acluva.org
vagraharkar@acluva.org
ggreenspan@acluva.org

Hassan Ahmad (VSB #83428)
THE HMA LAW FIRM, PLLC
6 Pidgeon Hill Dr, Suite 330
Sterling, VA 20165
T: 703.964.0245
hma@hmalegal.com

Nermeen Saba Arastu*
IMMIGRANT & NON-CITIZEN RIGHTS CLINIC
MAIN STREET LEGAL SERVICES, INC.
CUNY SCHOOL OF LAW
2 Court Square, 5th Floor
Long Island City, NY 11101
Tel: (202) 246-0124
nermeen.arastu@law.cuny.edu

Diala Shamas*
Astha Sharma Pokharel*
Samah Sisay**
Baher Azmy*
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th floor
New York, NY 10012
Tel: (212) 614-6464
dshamas@ccrjustice.org
ssisay@ccrjustice.org
asharmapokharel@ccrjustice.org
bazmy@ccrjustice.org

Jessica Myers Vosburgh**
CENTER FOR CONSTITUTIONAL RIGHTS
P.O. Box 486
Birmingham, AL 35201
Tel: (212) 614-6492
jvosburgh@ccrjustice.org

* admitted *pro hac vice*
** *pro hac vice* application forthcoming

Counsel for Petitioner

CERTIFICATE OF SERVICE

I, Eden Heilman, hereby certify that on this date, I uploaded a copy of Petitioner's Memorandum in Opposition to Respondents' Motion to Dismiss or Transfer Venue and any attachments using the CM/ECF system, which will cause notice to be served electronically to all parties.

Date: April 15, 2025

Respectfully submitted,

/s/ Eden B. Heilman
Eden B. Heilman, VSB No. 93554
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF VIRGINIA
P.O. Box 26464
Richmond, VA 23261
Tel: (804) 774-8242
eheilman@acluva.org

Counsel for Petitioner