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,

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