

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

RÜMEYSA ÖZTÜRK,

Petitioner,

v.

DONALD J. TRUMP, *et al.*,

Respondents.

Civil Action No. 2:25-cv-00374-wks

**MEMORANDUM IN SUPPORT OF MOTION FOR RELEASE UNDER *MAPP v. RENO*,
OR IN THE ALTERNATIVE, FOR RETURN TO VERMONT**

Rümeysa Öztürk is a scholar and cherished member of her academic community. The government has neither charged Ms. Öztürk with any crime nor suggested she is a flight risk or danger to others. Instead, the government secretly transported Ms. Öztürk across multiple state lines in the course of one night, banished her to an ICE facility halfway across the country, and has continued to detain her for more than two weeks solely because she co-authored an op-ed in her student newspaper. There is no question that the First Amendment protects Ms. Öztürk’s speech. And numerous immigration practitioners with dozens of years of experience between them make equally clear that they have never seen or heard of the government transporting a noncitizen from Massachusetts in the manner that Ms. Öztürk experienced.¹ It is thus plain that Ms. Öztürk is being retaliated against as part of the government’s policy to arrest and detain noncitizens based on First Amendment protected speech advocating for Palestinian rights. Each day Ms. Öztürk remains confined further effectuates the government’s unjustified retaliation

¹ See **Exh. 2**, Stefanie Fisher-Pinkert Decl. (“Fisher-Pinkert”), ¶ 8; **Exh. 3**, Anna Welch Decl. (“Welch”), ¶ 13; **Exh. 4**, Heather Yountz Decl. (“Yountz”), ¶¶ 10-11, 13; **Exh. 5**, Margaret Moran Decl. (“Moran”), ¶7.

against her and reinforces the broad chill already cast on other students and scholars who fear they could be next. The longer the government keeps Ms. Öztürk detained, the less likely it is that any other similarly situated student or scholar will feel free to risk speaking.

This Court has the inherent authority to release Ms. Öztürk pending the adjudication of her habeas petition. *See Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001). The authority to release a habeas petitioner *pendente lite* ensures that the writ remains an effective remedy under extraordinary circumstances. *See id.* at 230. Such release is required here. Ms. Öztürk’s claims for relief are substantial and the circumstances in which they arise are shocking. What is more, Ms. Öztürk’s detention bears no reasonable relation to any permissible, non-punitive purpose. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). She is neither a flight risk nor is she dangerous; to the contrary, Ms. Öztürk is deeply intertwined into her Tufts community, with numerous people who attest to her character, scholarship and connectivity to her University. *See Exh. 1*, Lia Ernst Decl. (“Ernst”) and Exhs. 1-A – 1-V thereto.

Finally, Ms. Öztürk raises serious constitutional and statutory issues that cannot be fully and fairly adjudicated if she is forced to suffer retaliatory detention throughout the pendency of this litigation. To release Ms. Öztürk at the end of what may prove to be long and protracted litigation will be a hollow victory, as many of the harms this litigation seeks to prevent will have already happened. This Court should therefore grant Ms. Öztürk immediate release pending adjudication of her petition.

FACTS

I. Ms. Öztürk is a cherished member of the Tufts community.

Ms. Öztürk is a Turkish Ph.D student in Child Study and Human Development at the Tufts Graduate School of Arts and Sciences. Exh. 1-V. She received her master’s degree in developmental psychology from Teachers College at Columbia University, where she was a

Fulbright scholar. Exh. 1-F. Ms. Öztürk’s work at Tufts focuses on researching how social media can help facilitate behavior in young people that benefits others rather than themselves. Exh. 1-C. As members of her doctoral advising committee and other supervisors attest, her work—which has garnered a prestigious fellowship and a competitive Graduate Student Research Award—is “highly innovative and special,” and she “has the potential to become a leader in applied developmental science.” Exh. 1-C, 1-E. As one professor recounts, Ms. Öztürk transformed her final assignment in their class into a published manuscript, which no other student had done in over 30 years of teaching that class. Exh. 1-I. Other professors within Ms. Öztürk’s department emphasize that she is a “compassionate, service-minded, and principled individual” and a student “upon whom [the] department has come to depend.” Exhs. 1-A, 1-U. In addition to her own studies, Ms. Öztürk has also served as a highly-sought-out teaching assistant whose students write “glowing reviews, highlighting her empathy, dedication, and commitment to their well-being.” Exhs. 1-E, 1-M, 1-P.

Ms. Öztürk’s connections to the Tufts community extend beyond the classroom. She has worked “on a number of projects to bring the department community together and offer space for collective healing,” including a workshop on collective grieving for children at the Interfaith Center at Tufts. Exhs. 1-A, 1-B, 1-G. Ms. Öztürk also spearheaded a project within the department “to engage students at all levels, faculty and staff in the creation of a community mosaic that represented the values of [the] department,” that still hangs in the department lobby “for all to see.” Exh. 1-I. She is an active participant in both the Muslim Student Association and the school’s interfaith friendship program. Exhs. 1-B, 1-E, 1-H, 1-K. One friend highlights that Ms. Öztürk’s “ability to express her own cultural and religious views while accepting, respecting and celebrating others’ is the true embodiment of American values.” Exh. 1-K. Socially, Ms. Öztürk is a “beloved member” of her department community; someone on whom so many

friends rely and who focuses on bringing people together. Exhs. 1-E, 1-H, 1-R. As one friend explains, Ms. Öztürk “constantly seeks to bring together disparate groups of people to connect,” Exh. 1-D, another emphasizes that she “is like family to us,” Exh. 1-F, while yet another describes her as an “older sister” to undergraduates at Tufts, Exh. 1-J. The Catholic Chaplain at Tufts explains that Ms. Öztürk is the “connective tissue in her community.” Exh. 1-B. Her “absence has left a profound void” in the Tufts community, and Ms. Öztürk’s fellow students agree that “our community is not whole without her here.” Exhs. 1-A, 1-P.

II. ICE detained Ms. Öztürk in retaliation for her co-authoring a single op-ed and secretly transferred her to Louisiana.

On March 26, 2024, Ms. Öztürk co-authored an op-ed published in *The Tufts Daily*, which criticized the Tufts administration’s response to the Tufts Community Union Senate’s passage of several resolutions concerning Israel’s human rights violations in Gaza.² The op-ed argued the resolutions “were the product of meaningful debate and represent a sincere effort to hold Israel accountable for clear violations of international law.” The op-ed urged Tufts to “trust in the Senate’s rigorous and democratic process” and “meaningfully engage with and actualize the resolutions passed by the Senate.” Tufts confirmed that the piece did not violate any school policies and “was consistent with speech permitted by the Declaration on Freedom of Expression adopted by our trustees on November 7, 2009.” Exh. 1-V. In February 2025, the doxxing organization Canary Mission³ published a profile on Ms. Öztürk, claiming that she “engaged in

² Rumeysa Ozturk et al., Op-ed: Try again, President Kumar: Renewing calls for Tufts to adopt March 4 TCU Senate resolutions, *THE TUFTS DAILY* (Mar. 26, 2024), <https://www.tuftsdaily.com/article/2024/03/4ftk27sm6jkj>.

³ James Bamford, *Who is Funding Canary Mission? Inside the Doxxing Operation Targeting Anti-Zionist Students and Professors*, *The Nation* (Dec. 22, 2023), <https://www.thenation.com/article/world/canary-mission-israel-covert-operations/>.

anti-Israel activism in March 2024” ECF 12 ¶17. The doxxing profile offered no support for this contention, linking only to the March 2024 *Tufts Daily* op-ed. *Id.*

On March 25, 2025, at approximately 5:15 p.m., plainclothes officers arrested Ms. Öztürk near her apartment in Somerville, Massachusetts. Video footage of the arrest shows that Ms. Öztürk screamed in fear as a hooded officer grabbed her wrists while another officer, who later covered his face, grabbed her phone.⁴ A total of six officers ultimately surrounded Ms. Öztürk, restrained her hands behind her back, and placed her in an unmarked vehicle. Following her arrest, ICE swiftly transported Ms. Öztürk across multiple state lines over a course of a few hours while denying her the opportunity to call her family, friends or a lawyer. *See* ECF 19-1, Wesling Decl. (“Wesling”); **Exh. 8**, Mahsa Khanbabai Decl. (“Khanbabai”); **Exh. 9**, Rümeysa Öztürk Decl. (“Öztürk”).

Ms. Öztürk was in a vehicle en route to an ICE facility in St. Albans, Vermont when her counsel filed a habeas petition on her behalf and immediately alerted government counsel. Wesling ¶¶ 12-13; Khanbabai ¶¶ 2-3. Within the hour, the United States District Court in Massachusetts issued an order that required the government not to move Ms. Öztürk out of Massachusetts without notice to “preserve the status quo,” which was again immediately conveyed to government counsel. ECF 2, 3; ECF 12 ¶ 22; Khanbabai ¶ 4. ICE “obtained Petitioner’s counsel’s contact information through the filing of the instant habeas petition.” Wesling ¶ 20. Yet, no one told Ms. Öztürk’s counsel that Ms. Öztürk was in Vermont for the approximately seven hours that she was held in that state. Wesling ¶¶ 13, 16-17; Khanbabai ¶ 21. And no one notified Ms. Öztürk’s counsel, the United States District Court in Massachusetts, or

⁴ WCVB Channel 5 Boston, *Surveillance shows Tufts graduate student detained*, YOUTUBE (Mar. 26, 2025), <https://www.youtube.com/watch?v=PuFIs7OkzYY>.

even government counsel before she was flown to Louisiana at 5:31 a.m. the next morning. Khanbabai ¶¶ 6-13, 21. Despite exhaustive inquiries, Ms. Öztürk’s counsel only learned of her location at approximately 3:27 pm that afternoon, and was not able to speak with her until later that night. Khanbabai ¶¶ 14, 20.

III. Ms. Öztürk’s arrest and detention, as well as the termination of her visa and student status, are part of a policy intended to silence and chill the speech of students and scholars who advocate for Palestinian human rights.

Ms. Öztürk’s arrest, transport and detention are part of an effort by the Trump administration to silence and chill speech supportive of the rights of Palestinians and critical of Israel’s war in Gaza, especially on university campuses. Opponents of such speech, including President Trump, have mischaracterized it as inherently supportive of Hamas and antisemitic. Thus, on the campaign trail, President Trump promised to “terminate the visas of all of those Hamas sympathizers, and . . . get them the hell out of our country,” and stated that foreign students would “behave” because “any student that protests, I throw them out of the country.” ECF 12 ¶¶ 38-43.

In January 2025, President Trump signed two Executive Orders to begin to fulfill his campaign promise of chilling speech in support of Palestinians. First, Executive Order 14161 states that it is the United States’ policy to “protect its citizens” from noncitizens who “espouse hateful ideology.” With regard to noncitizens already in the United States, it declares the need to “ensure” that they “do not . . . advocate for, aid, or support designated foreign terrorists and other threats to our national security.” ECF 12 ¶¶ 44-45.

Second, Executive Order 14188, entitled “Additional Measures to Combat Anti-Semitism,” declares the “policy of the United States to combat anti-Semitism vigorously.” In a

fact sheet,⁵ the White House promised “[i]mmediate action” to “investigate and punish anti-Jewish racism in leftist, anti-American colleges and universities.” The sheet framed the order as a “promise” to “Deport Hamas Sympathizers and Revoke Student Visas.” It quoted the President to say to noncitizens “who joined in the pro-jihadist protests” that the government “will find you, and . . . deport you.” The president promised to “quickly cancel the student visas of all Hamas sympathizers on college campuses, which have been infested with radicalism like never before.” *See also* ECF 12 ¶¶ 46.

On March 6, 2025, Secretary of State Marco Rubio posted to X: “Those who support designated terrorist organizations, including Hamas, threaten our national security. The United States has zero tolerance for foreign visitors who support terrorists.” *Id.* ¶ 48.

In early March 2025, the Trump administration began targeting students who had spoken in support of Palestinians for visa revocation, removal, and arrest and detention. On March 7, DHS agents attempted to arrest a Columbia doctoral student Ranjani Srinivasan who had posted on social media and signed open letters related to Israel’s war in Gaza. *Id.* ¶ 53. DHS released a statement characterizing her as being “involved in activities supporting Hamas.”⁶ *Id.* In the ensuing days and weeks, ICE has continued to target students and scholars engaged in activism, including by arresting Mahmoud Khalil and Dr. Badar Khan Suri, and promptly sending both to Louisiana detention facilities, ECF 12 ¶¶ 54-57. The government also sought unsuccessfully to detain Yunseo Chung and Momodou Taal. A court temporarily prohibited Ms. Chung’s

⁵ Fact Sheet: President Donald J. Trump Takes Forceful and Unprecedented Steps to Combat Anti-Semitism, THE WHITE HOUSE (Jan. 30, 2025), <https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-takes-forceful-and-unprecedented-steps-to-combat-anti-semitism/>.

⁶ VIDEO: Columbia University Student Whose Visa Was Revoked for Supporting Hamas and Terrorist Activities Used CBP Home App to Self-Deport, DEP’T OF HOMELAND SEC. (Mar. 14, 2025), <https://www.dhs.gov/news/2025/03/14/video-columbia-university-student-whose-visa-was-revoked-supporting-hamas-and>.

detention⁷ and Mr. Taal decided to depart the United States after being denied the same protection.⁸

Ms. Öztürk was targeted for arrest, detention, transfer, and attempted deportation pursuant to the Trump administration's policy of targeting noncitizen students for their pro-Palestinian speech. After Ms. Öztürk's arrest, a DHS spokesperson stated that "DHS and ICE investigations found [Ms. Öztürk] engaged in activities in support of Hamas Glorifying and supporting terrorists who kill Americans is grounds for visa issuance to be terminated."⁹ But more than two weeks after her arrest, and after numerous filings in federal courts, the government has pointed to no evidence of any such activities. In a March 27 press conference, Secretary of State Marco Rubio was asked about Ms. Öztürk's case and confirmed revoking her visa, providing no reason for doing so other than the op-ed referenced by the reporter. The secretary added, "We gave you a visa to come and study and get a degree not to become a social activist that tears up our university campuses. And if we've given you a visa and then you decide to do that we're going to take it away."¹⁰ He later remarked, "Every time I find one of these

⁷ Jaclyn Diaz, *What we know about the case of detained Georgetown professor Badar Khan Suri*, NPR (Mar. 21, 2025), <https://www.npr.org/2025/03/21/nx-s1-5336173/immigration-georgetown-university-professor>. Dr. Suri was later sent to Texas.

⁸ Gloria Pazmino & Amanda Musa, *Cornell student activist chooses to leave US after judge denies bid to immediately block deportation* (Apr. 2, 2025), <https://www.cnn.com/2025/03/31/us/cornell-student-activist-deportation/index.html>.

⁹ Paul Burton, *Tufts University student's visa revoked days before she was taken into custody in Massachusetts*, CBS BOSTON (last updated Mar. 28, 2025), <https://www.cbsnews.com/boston/news/rumeysa-ozturk-tufts-student-visa-ice-custody-massachusetts/>.

¹⁰ *Secretary Rubio Defends Revoking Turkish Student's Visa*, C-SPAN (Mar. 27, 2025), <https://www.c-span.org/clip/news-conference/secretary-rubio-defends-revoking-turkish-students-visa/5158479>.

lunatics I take away their visa,” suggesting that hundreds of visas have been revoked pursuant to the administration’s policy of targeting noncitizens for their pro-Palestinian speech.¹¹

ARGUMENT

I. This Court has authority to grant Ms. Öztürk immediate release pending the adjudication of this habeas petition.

This Court may release Ms. Öztürk on personal recognizance, or alternatively on bail, pending adjudication of her petition pursuant to the Court’s inherent habeas authority. *See Mapp*, 241 F.3d at 231; *Elkimya v. Dep’t of Homeland Sec.*, 484 F.3d 151, 154 (2d Cir. 2007). Numerous courts within this circuit have already ordered release pursuant to *Mapp* in contexts involving challenges to detention, removal or a combination of both. *See, e.g., Avendaño Hernandez v. Decker*, 450 F. Supp. 3d 443 (S.D.N.Y. 2020); *D’Alessandro v. Mukasey*, No. 08-CV-914, 2009 WL 799957 (W.D.N.Y. Mar. 25, 2009); *S.N.C. v. Sessions*, No. 18 Civ. 7680, 2018 WL 6175902 (S.D.N.Y. Nov. 26, 2018); *Kiadii v. Decker*, 423 F. Supp. 3d 18 (S.D.N.Y. 2018). This Court should do the same.

Under *Mapp*, “a court considering a habeas petitioner’s fitness for bail” must analyze (1) whether the habeas petition raises “substantial claims” and (2) whether “extraordinary circumstances” exist “that make the grant of bail necessary to make the habeas remedy effective.” 241 F.3d at 230 (cleaned up). To raise a substantial claim, “the Second Circuit does not require that the petitioner convince every court, let alone the court considering the bail application, that he *will* succeed; rather, he need only show that his claims are ‘substantial.’” *D’Alessandro*, 2009 WL 799957, at *3. This standard is largely akin to demonstrating a

¹¹ *See* Madeline Halpert, *Marco Rubio says US revoked at least 300 foreign students’ visas*, BBC (Mar. 27, 2025), <https://www.bbc.com/news/articles/c75720q9d71o>; *see also* Secretary of State Marco Rubio Remarks to the Press [hereinafter “Rubio Remarks”], U.S. Dep’t of State (March 28, 2025), <https://www.state.gov/secretary-of-state-marco-rubio-remarks-to-the-press-3/>.

“likelihood of success.” See e.g., *id.* at *3; *Kiadii*, 423 F. Supp. 3d at 20. At the same time, a broad range of circumstances may qualify as “extraordinary,” including severe health issues, lack of flight risk or dangerousness, and the nature of the government behavior giving rise to the habeas claim. See, e.g., *Coronel v. Decker*, 449 F. Supp. 3d 274, 289 (S.D.N.Y. 2020); *D’Alessandro*, 2009 WL 799957, at *3. Where, as here, the petitioner would face “the very outcome they seek to avoid” if they remained in detention pending determination of the merits, release is necessary to make the habeas remedy effective. See *Coronel*, 449 F. Supp. 3d at 289.

II. Ms. Öztürk satisfies the requirements for release under *Mapp*.

This Court should grant Ms. Öztürk’s motion for release on recognizance, or alternatively grant her release on bail. All of Ms. Öztürk’s claims for relief are substantial—although the Court need only find only one such claim to be substantial under the standard, *Avendaño Hernandez*, 450 F. Supp. 3d at 447—and the astounding events leading to those claims necessitate release.¹² Each day Ms. Öztürk remains in detention harms her education, hurts her community, risks her health and rewards the government for its unconstitutional attempt to punish and chill student speech. Releasing Ms. Öztürk pending final adjudication of her petition is necessary to preserve the effectiveness of the habeas remedy.

A. Ms. Öztürk raises substantial claims for habeas relief.

Through her habeas corpus petition and complaint, Petitioner seeks to protect her rights under the First Amendment, the Due Process Clause of the Fifth Amendment, the Administrative Procedure Act, and the *Accardi* doctrine.

¹² While all of Ms. Öztürk’s claims are substantial, this memo focuses on the subset of arrest, transport and detention related claims for the purposes of the bail motion.

1. First Amendment. Ms. Öztürk’s substantial claim that she was arrested by six plain clothes officers, secretly transported in less than 24 hours across several state lines and ultimately 1300 miles away, and detained because of the views she expressed in a student newspaper op-ed implicates the heart of the First Amendment.

Speech on “public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.” *Connick v. Myers*, 461 U.S. 138, 145 (1983) (internal quotation marks omitted). Because “[i]t is a fundamental principle of the First Amendment that the government may not punish or suppress speech based on disapproval of the ideas or perspectives the speech conveys,” viewpoint discrimination is “an egregious form of content discrimination, which is presumptively unconstitutional.” *Matal v. Tam*, 582 U.S. 218, 248 (2017) (Kennedy, J., concurring in part) (cleaned up); *see also Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). These protections are especially strong within the context of the press, as “[s]uppression of the right of the press” to “clamor and contend for or against change . . . muzzles one of the very agencies the Framers of our Constitution thoughtfully and deliberately selected to improve our society and keep it free.” *Mills v. State of Ala.*, 384 U.S. 214, 219 (1966).

Ms. Öztürk’s arrest, transport and detention violates these core First Amendment principles as unconstitutional retaliation based on her protected speech. To succeed on her First Amendment retaliation claim, Ms Öztürk must show that: “(1) she has a right protected by the First Amendment; (2) the defendant’s actions were motivated or substantially caused by [the petitioner’s] exercise of that right, [and] (3) the defendant’s actions caused [the petitioner] some injury.” *Smith v. Campbell*, 782 F.3d 93, 100 (2d Cir. 2015) (cleaned up); *see also Bello-Reyes v. Gaynor*, 985 F.3d 696, 700 (9th Cir. 2021) (“A plaintiff making a First Amendment retaliation claim must allege that (1) [s]he was engage in a constitutionally protected activity, (2) the

defendant's actions would chill a person of ordinary firmness from continuing to engage in the protected activity and (3) the protected activity was a substantial or motivating factor in the defendant's conduct.") (internal quotation marks omitted) Ms. Öztürk easily satisfies this standard.

First, noncitizen speakers are protected by the First Amendment. *See Bridges v. Wixon*, 326 U.S. 135, 148 (1945) ("Freedom of speech and press is accorded aliens residing in this country.") This protection readily applies to Ms. Öztürk's co-authorship of an op-ed in a student newspaper on an issue of public concern. The speech of a noncitizen on an issue central to "current political debate among American citizens and other residents" lies "'at the heart of First Amendment protection' and 'occupies the highest rung of the hierarchy of First Amendment values.'" *Ragbir v. Homan*, 923 F.3d 53, 70 (2d Cir. 2019) (quoting *Snyder v. Phelps*, 562 U.S. 443, 451-52 (2011)), *cert. granted, remanded, and vacated sub nom. on other grounds, Pham v. Ragbir*, 141 S. Ct. 227 (2020)). Courts in this and other circuits have made clear that the First Amendment protects noncitizens who are detained and threatened with deportation because of their protected speech. *See, e.g., id.; Bello-Reyes*, 985 F.3d at 698; *Gutierrez-Soto v. Sessions*, 317 F. Supp. 3d 917, 921 (W.D. Tex. 2018).

Second, there is no question that Ms. Öztürk's op-ed was a substantial factor in the government's decision to arrest and detain her—indeed it is the *only* justification the government has provided in the more than two weeks since her initial arrest. "To allow this retaliatory conduct to proceed would broadly chill protected speech" of other noncitizens engaged in pro-Palestinian advocacy, extending the unconstitutional impact of Ms. Öztürk's arrest and detention. *Ragbir*, 923 F.3d at 71.

Finally, the government's actions did injure, and continue to injure, Ms. Öztürk. Indeed, few government actions could be more chilling on speech than a federal agency choosing to

abruptly arrest, secretly transport, and ultimately jail, a person based on a single op-ed in a student newspaper. *Cf. City of Houston, Tex. v. Hill*, 482 U.S. 451, 462-63 (1987) (“The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.”). Both the fact and the nature of Ms. Öztürk’s arrest, transfer and detention are jarring, as the public outcry in response to the video her arrest makes clear.¹³

2. Due Process. Ms. Öztürk’s Fifth Amendment due process claims are also substantial. The Constitution establishes due process rights for “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Black v. Decker*, 103 F.4th 133, 143 (2d Cir. 2024) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690. Immigration detention is civil, not criminal, and thus only justified when necessary to ensure a noncitizen’s appearance during removal proceedings and to prevent danger to the community. *See Black*, 103 F.4th at 143 (citing *Zadvydas*).

The government’s detention of Ms. Öztürk is wholly unjustified, as the government has not demonstrated that Ms. Öztürk—a fixture of her university in the final year of her dissertation who is deeply connected to her community and has no criminal record—is either a flight risk or a danger. *Cf. Zadvydas*, 533 U.S. at 690; *see Exhs. 1-A – 1-V*. Rather, Ms. Öztürk’s detention bears no “reasonable relation” to any nonpunitive government purpose. *See Zadvydas*, 533 U.S.

¹³ *See, e.g.*, Niha Masih, Anumita Kaur, Frances Vinall & Julie Yoon, *Tufts student from Turkey detained by masked officers, video shows*, Washington Post (Mar. 27, 2025), <https://css.washingtonpost.com/immigration/2025/03/27/rumeysa-ozturk-tufts-student-ice-video/>; CBS News, *Community in shock where federal agents detained Tufts University student*, YouTube (Mar. 28, 2025), <https://www.youtube.com/watch?v=qC16PfQbKT4>.

at 690.. Here, there is every indication that Ms. Öztürk’s “detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons,” which violates the due process clause. *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring); *see also German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 211 (3d Cir. 2020) (“[I]f an alien’s civil detention . . . looks penal, that tilts the scales toward finding the detention unreasonable.”).

3. APA and Accardi doctrine. Finally, Ms. Öztürk’s APA and *Accardi* claims regarding her arrest and detention are substantial. The government has adopted an unconstitutional and unlawful policy of targeting noncitizen students for arrest, transport and detention based on First Amendment-protected speech advocating for Palestinian rights. *See* ECF 12 ¶¶ 38-62.¹⁴ This policy is arbitrary and capricious, an abuse of discretion, contrary to constitutional right, contrary to law, and in excess of statutory jurisdiction. 5 U.S.C. § 706(2)(A)-(C). Moreover, the government’s actions present a classic violation of the *Accardi* doctrine, as the government is violating its regular processes and rules, including those pertaining to First Amendment activity, in order to detain and deport Ms. Öztürk. *Cf. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (agency may not violate its own rules and processes simply because Attorney General singled him out for deportation); *see also, e.g.,* DHS, Memorandum of Kevin McAleenan (May 17, 2019) (stating DHS “does not profile, target, or discriminate against any individual for exercising his or her First Amendment Rights”).¹⁵

¹⁴ In a further reflection of this policy, on May 10, 2025, ICE explained in a post on X that “if it crosses the U.S. border illegally, it’s our job to STOP IT” over an image that stated, “people, money, products, *ideas*”. *Available at* <https://perma.cc/2FLY-4S6J> (emphasis added).

¹⁵ *Available*

at https://www.dhs.gov/sites/default/files/publications/info_regarding_first_amendment_protected_activities_as1_signed_05.17.2019.pdf.

B. Ms. Öztürk’s case presents extraordinary circumstances.

Ms. Öztürk’s health, her strong community ties, and the unprecedented circumstances of her arrest, detention, and transfer to Louisiana all present extraordinary circumstances justifying her release during the pendency of this litigation.

Severe health issues are the “prototypical” example of “extraordinary circumstances that justify release pending adjudication of habeas.” *Coronel*, 449 F. Supp. 3d at 289. For several years, Ms. Öztürk has suffered from asthma, Öztürk ¶ 25, which courts within this and other circuits have recognized constitutes a serious medical need. *See, e.g., Bost v. Bockelmann*, No. 9:04-CV-0246, 2007 WL 527320, at *9 (N.D.N.Y. Feb. 20, 2007) (collecting cases within the Second Circuit recognizing that asthma may constitute a serious medical need particularly when accompanied by attacks); *Adams v. Poag*, 61 F.3d 1537, 1543 (11th Cir. 1995) (finding that § 1983 plaintiff’s asthma constituted a serious medical need). Ms. Öztürk’s asthma causes her difficulty breathing, including when she is exposed to chemical fumes, dust, damp spaces, mold and stress. *Id.* ¶ 25 Ms. Öztürk estimates that she has had about 13 asthma attacks in her life, and four—more than twenty five percent of all of the attacks in her lifetime—have occurred within the 16 days that she has been held in ICE custody. *Id.* ¶¶ 27, 33, 36, 40. These attacks have left her in pain and scared, and have not been adequately treated. *Id.* ¶¶ 33, 36, 39, 41-42. Ms. Öztürk’s health will remain at heightened risk so long as she remains at the South Louisiana ICE Processing Center, a facility that is notorious for its inadequate medical care. *Id.* ¶¶ 41-43, 49.¹⁶

¹⁶ *See* DECKER & ENRIQUEZ, *Inside the Black Hole*, 33, 37-38, 41-46, 50, 53, 57, 59-60, 66, 70, 72, 74-80 (August 2024), https://www.laclu.org/sites/default/files/inside_the_black_hole_systemic_human_rights_abuses_against_immigrants_detained_disappeared_in_louisiana.pdf.

Courts can also consider a lack of evidence that a petitioner is a flight risk or a danger to the community to establish extraordinary circumstances. *See, e.g., D'Alessandro*, 2009 WL 799957, at *3. In this case, “there is no evidence whatsoever” that Ms. Öztürk poses such risks. *Id.* Rather, all evidence demonstrates Ms. Öztürk’s deep ties to her academic and social community. Öztürk ¶ 3. According to those around her, Ms. Öztürk is “a dedicated scholar, mentor, and person of immense integrity and kindness,” and “is always eager to get to know people who are different from her.” *Id.* Exhs. 1-A, 1-B; *see also* Exhs. 1-A, 1-B, 1-E, 1-J, 1-K, 1-P, 1-Q, 1-U (describing Ms. Öztürk’s involvement with interfaith activities on campus). Ms. Öztürk has every reason to want to return to and stay in Somerville given her strong personal and professional bonds to people at Tufts, and the fact that she is “mere months from completing her PhD program.” Exh. 1-L. Declarant after declarant has sworn to Ms. Öztürk’s deep connectivity to Tufts, noting that she is an “invaluable” and “integral part of the fabric that is our community,” Exhs. 1-M, 1-I, that she has “many, many people who miss her,” Exh. 1-R, and that “her contribution to the soul of our community is what we miss most.” Exh. 1-L. Both Ms. Öztürk and the community from which she was torn are being “irreparably damaged” by her daily absence. *See id.*; Exh. 1-C.

Finally, courts can look at the scope of the constitutional deprivation that a petitioner has experienced and the nature of the government’s behavior surrounding a petitioner’s detention, to support a finding of extraordinary circumstances. *See, e.g., D'Alessandro*, 2009 WL 799957, at *3 (listing “grossly defective” immigration custody reviews and petitioners unconstitutionally prolonged detention as two circumstances that qualified the case as extraordinary and exceptional). And here, the government’s motivations for Ms. Öztürk’s arrest, transfer and detention, and the way in which they implemented these actions, constitute extraordinary circumstances. With respect to the former, as described *supra*, the government targeted Ms.

Öztürk for arrest, transfer and detention solely because of a single op-ed in a student newspaper. This clear—and broad—violation of the First Amendment both unlawfully retaliates against Ms. Öztürk and unlawfully chills the speech of countless noncitizen students.

The manner in which the government effectuated Ms. Öztürk’s arrest, transfer and detention further underscores the existence of extraordinary circumstances justifying her release. The government’s conduct in this case—including the location, timing and secrecy of Ms. Öztürk’s transfers—has been “highly unusual,” to put it mildly. Yountz ¶¶ 10-13; *see also* Fisher-Pinkert ¶ 8 (noting the conduct was “highly irregular”).

To begin, in 17 years of working with hundreds of immigrants, Attorney Yountz has ever seen an F-1 revocation where, as here, “the noncitizen was arrested and detained on the street, by masked men, with no prior notice that the visa had been revoked.” Yountz ¶ 13. What is more, typically it is the ICE Enforcement and Removal Operations’ (ERO) Boston Field Office in Burlington, Massachusetts that books people who are arrested on civil immigration charges in Massachusetts. Yountz ¶¶ 10, 12; Fisher-Pinkert ¶ 5; Moran ¶ 5. The Homeland Security Investigations (“HSI”) office in Boston can also process people arrested in Massachusetts by HSI or Customs and Border Protection. Yountz ¶ 10; Fisher-Pinkert ¶ 7. And when ICE pursues detention in Massachusetts, the person is typically held in Burlington for at least 12 hours—and generally 24-48 hours—before any transfer occurs. Yountz ¶ 12.

Here, however, Ms. Öztürk was not taken to either Burlington or the HSI office in Boston. Instead, ICE transported Ms. Öztürk to an undisclosed location in Methuen, Massachusetts for an undisclosed reason. ECF 19-1 ¶ 11. ICE held Ms. Öztürk in Methuen for just 14 minutes before swiftly transporting her across the border to another undisclosed location in Lebanon, New Hampshire, for another undisclosed reason. *Id.* ¶¶ 11-12; Öztürk ¶ 13 (noting that they stopped in or near Lawrence, MA, which is near Methuen). Once Ms. Öztürk was

removed from Massachusetts, she was held in New Hampshire for several hours before ICE again placed her in a van and began driving to St. Albans in Vermont at approximately 9:03 p.m. *Id.* In their 40 plus years of combined immigration law experience in New England, Attorneys Yountz, Fisher-Pinkert and Welch have never seen or heard of an ICE detainee arrested in Massachusetts being transferred to Methuen, Lebanon and St. Albans within a matter of hours. Welch ¶ 13, Fisher-Pinkert ¶ 8, Yountz, ¶ 11. And in their nearly 20 years of combined immigration law experience in Vermont, Attorneys Diaz and Stokes have neither seen nor heard of a detainee arrested in Massachusetts being held in St. Albans. **Exh. 6**, Jill Martin Diaz Decl. (“Diaz”) ¶ 8; **Exh. 7**, Brett Stokes Decl (“Stokes”) ¶ 5.

Ms. Öztürk was still in the van at 10:02 p.m. when her counsel filed a habeas petition on her behalf. ICE obtained Petitioner’s counsel’s contact information through this filing, ECF 19-1 ¶ 20, but ICE did not notify Ms. Öztürk’s counsel when she arrived in St. Albans, Vermont, at 10:28 p.m, or at any point during her time in the state. ECF 19-1 ¶¶ 12-13; Khanbabai ¶ 21. Nor did ICE allow Ms. Öztürk to call her counsel herself, despite her repeated requests and their earlier promises that she would be able to do so. Öztürk, ¶¶ 19-20. This is particularly notable as St. Albans is the only ICE detention facility in Vermont where a detainee can be held without their location becoming publicly available on the Vermont Department of Corrections website. Stokes, ¶ 7.

At 5:31 a.m. on Wednesday morning, Ms. Öztürk was again transported without any notice, this time via flight to Louisiana. This movement and lack of notice occurred despite the U.S. District Court of Massachusetts 10:55 p.m. order on Tuesday night that required the government not to move Ms. Öztürk out of Massachusetts without providing notice to “preserve the status quo.” ECF 2, 3; ECF 19 ¶ 22. Six hours after this order, ICE placed Ms. Öztürk on a

flight to Louisiana without notifying the Court, Ms. Öztürk's counsel or even government counsel. Khanbabai ¶¶ 10-14, 21.

For almost ten additional hours after Ms. Öztürk's flight left Vermont, ICE continued to keep her location a secret, despite numerous efforts from multiple people to learn her whereabouts. Ms. Öztürk's counsel repeatedly contacted ICE ERO and ICE HSI but received no response. Khanbabai ¶ 6. She repeatedly checked ICE's Online Detainee Locator System, but Ms. Öztürk's "current detention facility" field remained blank. Khanbabai ¶ 7. She repeatedly asked government counsel about Ms. Öztürk's whereabouts, to no avail. Khanbabai ¶¶ 9-12. A representative from the Turkish consulate personally went to the ICE office in Burlington, Massachusetts, but was told that ICE could not provide any information about Ms. Öztürk's location other than the fact that she was not at that facility. Khanbabai ¶ 8. It was not until 3:27 p.m. on Wednesday afternoon, approximately 22 hours after Ms. Öztürk's arrest, that Ms. Öztürk's counsel received an email from government counsel that ICE had "informed" him that Ms. Öztürk had been moved to Louisiana. Khanbabai ¶ 14.

ICE stated that it decided that Ms. Öztürk would be transferred to Louisiana even before she was arrested. ECF 19-1 ¶ 6. Yet the circumstances of Ms. Öztürk's abduction do not comport with ICE's allegation that it made this choice because it had "determined there was no available bedspace for [her] at a facility where she could appear for a hearing" in New England. ECF 19-1 ¶ 6. Plymouth County Correctional Facility in Massachusetts, Wyatt Detention Facility in Rhode Island, Strafford County Correctional Facility in New Hampshire, Cumberland County Jail in Maine, Chittenden Regional Correctional Facility in Vermont, and ICE's Buffalo Facility in Batavia, New York can all hold women detained by ICE. Yountz ¶¶ 8-9; Fisher-Pinkert ¶ 5. There is no indication that ICE communicated with any of these facilities to determine whether they had bedspace available for Ms. Öztürk. To the contrary, it seems ICE either did not

communicate with these facilities or ignored what it heard. For example, it appears that the Cumberland County Jail had at least 16 open beds on March 25 and March 26, 2025. Welch ¶¶ 7-12.

For almost twenty hours, counsel was kept in the dark about Ms. Öztürk’s whereabouts through a series of deliberate and unusual moves that seemed designed to keep her location a secret and to keep client and counsel from talking, despite repeated efforts and requests from both to communicate with the other. Öztürk, ¶¶ 13, 15, 19-20, 28, 32; Khanbabai ¶¶ 9-11, 13, 15, 17, 19. Collectively, it is hard to imagine that “the *Mapp* court could have imagined circumstances more extraordinary” than Ms. Öztürk’s experiences. *Cf. Kiadii v. Decker*, 423 F. Supp. 3d 18, 20-21 (S.D.N.Y. 2018).

C. These extraordinary circumstances make the grant of bail necessary to make the habeas remedy effective.

In light of what is described above, release pending the litigation of Ms. Öztürk’s petition is necessary to secure her an effective habeas remedy.

First, Ms. Öztürk’s challenge to the constitutionality of the government’s decision to arrest, transport and detain her is a significant part of the First Amendment injury at the center of this litigation. Even if Ms. Öztürk is ultimately released at the conclusion of what could be protracted litigation, she will have been prevented from speaking freely all the while and the message to others will be received loud and clear: speak out at your own peril. *Cf. Arias v. Decker*, 459 F. Supp. 3d 561, 580 (S.D.N.Y. 2020) (granting bail to avoid “precisely the harm their petition seeks to avert”).

Second, the habeas remedy is designed to ensure that Ms. Öztürk maintains meaningful access to the judicial process. She cannot meaningfully assist in the litigation of this case when she is far away from her legal team and the government restricts her ability to regularly speak

with counsel and places her health at risk. Release would allow Ms. Öztürk to have regular access to counsel and address the rapidly unfolding issues in her case.

Third, release is necessary to avoid what is a devastating punitive consequence of Ms. Öztürk's continued detention, namely, the disruption of her scholarship. Ms. Öztürk has labored for five years to work towards her doctorate, and with only nine months left to complete the program, she is "very concerned about not being able to finish [her] studies." Öztürk ¶ 52; *see also* Exh. 1-C, 1-L, 1-J, 1-U. "Completing her dissertation is the final step in [her] doctoral studies," which is both "essential for her professional development" and will advance her chosen field of study "by putting the best developmental science, guided by her commitments to inclusion and equity, out into the world." Exh. 1-L, 1-U. According to one member of Ms. Öztürk's advisory committee, she is entering the "intensive dissertation phase" of her program, which includes a "qualifying review" that is currently "scheduled to take place in early May" and which will be very difficult to reschedule. Exh. 1-C; *see also* Öztürk ¶ 54. Ms. Öztürk is also scheduled to present at a conference in late April/early May, and to teach a summer class for college level high school students. Öztürk ¶¶ 54-55.

Ms. Öztürk's detention has already delayed work on her dissertation proposal because it is very difficult to access books at the facility, and it took "nearly 2 weeks to get a few pieces of paper and pens." Öztürk ¶ 53. Every day will put her farther and farther behind. Ms. Öztürk must be released during the pendency of her litigation so that she can continue her "cherished work" and is not prohibited from achieving "this major milestone after years of intensive work." Öztürk ¶¶ 55; Exh. 1-U.¹⁷

¹⁷ Before the District Court of Massachusetts, the government suggested that Ms. Öztürk could not seek bail in federal court because she is entitled to a bond hearing in immigration court. ECF 19, at 20, 26 & n.8. To the extent the government attempts to resurrect that argument here, it is

III. If she is not immediately released on bail, Ms. Öztürk should be returned to Vermont.

In the alternative, if Ms. Öztürk is not immediately released during the pendency of this petition, she should be returned to Vermont. The remedy of returning Ms. Öztürk to this district is an appropriate exercise of this habeas Court’s equitable power in response to the government’s decision to secretly spirit her 1300 miles away even after receiving a court order that instructed the agency not to move her out of Massachusetts without prior notice to “preserve the status quo” (March 25 Court Order). ECF 2, 3; ECF 19 ¶ 22; *see Schlup v. Delo*, 513 U.S. 298, 319 (1995) (“habeas corpus is, at its core, an equitable remedy”); 28 U.S.C. § 1651(a) (authorizing federal courts to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law”); 8 U.S.C. § 2243 (habeas courts authorized to order relief “as law and justice require”).

A. ICE failed to take minimal good-faith efforts in light of the U.S. District Court of Massachusetts March 25 Order, which was intended to maintain the status quo.

ICE’s decision to transfer Ms. Öztürk from Vermont to Louisiana without notifying her counsel, government counsel, or the U.S. District Court of Massachusetts, after receiving an order from that court not to transfer her from Massachusetts without prior notice to preserve the “status quo,” at a minimum represents a failure to take reasonable, appropriate action given that order.

unavailing. The government pointed to no authority for the proposition that a habeas petitioner must exhaust administrative remedies before seeking release *pendente lite*, and for good reason. The exigency of Ms. Öztürk’s substantial constitutional and statutory claims requires immediate release, especially where, as here, petitioner faces irreparable harm, the immigration courts are not empowered to hear constitutional claims, and there is ordinarily no judicial review of the agency’s bond determination other than through habeas. *See Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003).

Shortly after Ms. Öztürk was taken out of Massachusetts, ICE was ordered not to move her from Massachusetts without prior notice. ECF 19 ¶ 22. The express intent of the March 25 Court Order to remain in Massachusetts was to “preserve the status quo,” ECF 2, 3, because both Ms. Öztürk’s counsel and the Court believed Ms. Öztürk was physically located in Massachusetts at the time of the order based on the information available to them at that time. The information available to ICE at that time—information that it had not shared with government counsel or Ms. Öztürk’s counsel, and that it had actively prevented Ms. Öztürk herself from sharing—was that the status quo at the time of the order was Vermont, and not Massachusetts. ECF 19-1, ¶13.

At the time of the March 25 Court Order, then, the government had a choice. It could return Ms. Öztürk to Massachusetts in order to be in compliance with the order, or it could immediately notify the Court that Ms. Öztürk was already outside of Massachusetts in Vermont.

ICE chose neither of these reasonable, good-faith responses. Instead, six hours after receiving the March 25 Court Order, ICE secretly moved Ms. Öztürk from a state bordering Massachusetts to a state 1,300 miles away from Massachusetts without notifying the U.S. District Court of Massachusetts, Ms. Öztürk’s counsel, or government counsel. Ms. Öztürk’s location remained hidden from both her own counsel and government counsel for approximately 10 additional hours. Khanbabai ¶ 14.

This decision—which appears intended to quickly and surreptitiously distance Ms. Öztürk from the jurisdiction of both the U.S. District Court of Massachusetts and this Court—violates the spirit, if not the letter, of the March 25 Court Order. *See John B. Stetson Co. v. Stephen L. Stetson Co.*, 128 F.2d 981, 983 (2d Cir. 1942) (“In deciding whether an injunction has been violated it is proper to observe the objects for which the relief was granted and to find a breach of the decree in violation of the spirit of the injunction, even though its strict letter may

not have been disregarded.”). ICE was perfectly capable of adopting a reasonable response to the March 25 Court Order that complied with its letter, or at least its spirit, but it deliberately chose not to.

B. An order requiring Ms. Öztürk’s return from Louisiana to Vermont is warranted.

ICE’s disregard of the March 25 Court Order amply warrants the remedy of return. Return is an appropriate exercise of this Court’s equitable habeas powers, *Schlup*, 513 U.S. at 319, and its power to issue and enforce orders that preserve its jurisdiction and its ability to conduct the proceedings in this case. 28 U.S.C. § 16751(a); 8 U.S.C. § 2243. This Court’s powers under these authorities are broad and flexible. Although the March 25 Court Order did not originate from this Court, ICE’s response to that order was apparently an attempt to avoid the jurisdiction of both the U.S. District Court of Massachusetts *and* this Court. In doing so, ICE also weakened Ms. Öztürk’s ability to litigate this case. Ms. Öztürk is presently in a facility in which her health needs are not adequately addressed and where her access to counsel is inconsistent. Intermittent and virtual access to a client in Louisiana cannot substitute for a more regular and natural combination of in-person and virtual access to her even if she were to remain detained but held within the jurisdiction of this Court. Transferring Ms. Öztürk back to Vermont would provide her better access to counsel, permit her to provide input and any testimony that may be necessary to support her claims, and allow counsel to better advocate for safer conditions for her health.

Finally, this Court’s authority to ensure compliance with court orders also supports the requested relief. “It is important to the administration of justice for courts to respond to unexcused violations of their order.” *JSC Foreign Econ. Ass’n Technostroyexport v. Int’l Dev. & Trade Servs., Inc.*, No. 03-civ-5562, 2005 WL 1958361, at *17 (S.D.N.Y. Aug. 16, 2005) (quoting 7 Moore’s Federal Practice § 37.50(1)(a)). Although the March 25 Court Order

stemmed from another court, this Court is the only judicial actor that can currently respond to ICE's disregard of that order. To uphold the administration of justice where ICE made no attempt to comply with a sister-court's order that was intended to preserve the status quo in a manner that attempted to strip this Court of jurisdiction as well, this Court should exercise its broad discretion to return Ms. Öztürk to Vermont.

CONCLUSION

For the foregoing reasons, Ms. Öztürk's motion for release on recognizance or bail, or in the alternative, for transfer to the District of Vermont, should be granted.

Respectfully submitted,

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**Pro hac vice application forthcoming*

***Admitted to appear pro hac vice*