**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

MAJID S. KHAN,

*Petitioner*,

v.

JOSEPH R. BIDEN, JR., *et al.*,

*Respondents*.

Civil Action No. 22-1650

**PETITIONER'S REPLY IN FURTHER SUPPORT OF HIS PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR SUMMARY ORDER GRANTING WRIT OF HABEAS CORPUS AND OTHER RELIEF, AND IN OPPOSITION TO RESPONDENTS' CROSS-MOTION TO HOLD IN ABEYANCE BRIEFING ON CERTAIN ISSUES**

Petitioner Khan, by and through his undersigned counsel, respectfully submits this reply in further support of his habeas petition and motion for summary relief (ECF Nos. 1, 15), and in opposition to Respondents' cross-motion to hold in abeyance briefing on issues related to the merits of this habeas case (ECF Nos. 17, 18, 19) ("Gov't Br."). Petitioner's habeas petition and motion for summary relief should be granted, and Respondents' cross-motion should be denied.

**PRELIMINARY STATEMENT**

The parties in this case agree that Petitioner must be transferred "urgently" from Guantanamo to a country other than Pakistan, where he would face torture and other persecution because he cooperated with U.S. authorities for a decade. The parties also agree that Petitioner's permanent resettlement in another country will require further sensitive diplomatic negotiations, which only began after Petitioner's criminal sentence ended nearly six months ago. In addition, Respondents do not dispute that Petitioner remains imprisoned at Guantanamo, under conditions that are worse than those under which he served his criminal sentence for 10 years, and each day he remains imprisoned beyond the completion of his sentence causes him *substantive harm*. Indeed, while Petitioner's conditions are better than those of other detainees who are not important government cooperators, it is essential to understand that from his perspective, his day-to-day circumstances are worse now than when he was serving his sentence. Petitioner is not free; rather, he continues to be punished indefinitely and without foreseeable end. He is still imprisoned alone, allowed routine "social interaction" only with his jailors, and denied frequent or direct access to his family and the outside world, or other attributes of the freedom to which all parties agree he is entitled.[1] Nor has he been afforded any meaningful opportunity to use this

[1] Respondents correctly note that Petitioner's video access to his counsel was restored by Respondents after he filed his habeas corpus petition. *See* Gov't Br., Ex. 1.

time to prepare for life after Guantanamo. In contrast to when he was serving his sentence and could mark off days on the calendar, he now lives with the substantial weight and anxiety of not knowing whether, when, or where he will be released and reunited with his family.

The central dispute among the parties is whether the Court should exercise its habeas authority to remedy Petitioner's circumstances and speed his release from imprisonment without foreseeable end, including by ordering his conditional release from imprisonment pending the Court's resolution of this matter and the U.S. State Department's efforts to permanently resettle him. In his habeas petition and motion for summary relief, Petitioner contends that the Court should grant the writ and order his prompt release because his continued imprisonment violates U.S. and international law. If he is not transferred within 30 days thereafter, the Court should hold a hearing to address his conditional release into the Naval Base or, if necessary, the United States.

Far from offering any persuasive response to the merits of Petitioner's arguments, Respondents in essence argue that the Court has no authority to order relief. Respondents do not even *cite* 28 U.S.C. § 2243 or *Boumediene v. Bush*, 553 U.S. 723 (2008), both of which require prompt disposition of Guantanamo habeas cases to ensure that the writ is effective. Instead, Respondents baldly claim plenary authority under the laws of war to "wind up" Petitioner's imprisonment for an indefinite period of time without even addressing the substantial authority Petitioner cited establishing that he is not a detainee under the laws of war, and that there is no such plenary wind up authority in any case. Respondents further contend that the Court lacks authority to order Petitioner's conditional release, including authority to order Petitioner's jailors to change his place or conditions of imprisonment. That argument, too, ignores the substantial contrary authority Petitioner has cited.

In sum, Petitioner has served his sentence and is entitled to the issuance of the writ. The Court should grant the writ and deny the motion to abate for the following reasons.

## ARGUMENT

### A. Respondents' "Wind Up" Arguments Are Not Applicable to Petitioner, Have Twice Been Rejected by This Court, and Are Otherwise Meritless

Respondents claim that their authority to detain Petitioner under the AUMF prior to completing his military commission sentence "necessarily includes the authority to resolve his detention in a safe and orderly fashion." Gov't Br. at 3; *id.* at 10. Respondents contend that this interpretation of the AUMF "is consistent with historical practice and makes practical sense." *Id.* at 3. But Respondents do not explain what resolving Petitioner's case in a "safe and orderly" manner means, what the duration and limits of that purported authority may be, or why, after failing to transfer Petitioner and continuing to hold him in punitive confinement for six months after the completion of his sentence, this Court should afford Respondents further deference to transfer Petitioner whenever, wherever, and under whatever circumstances they unilaterally deem appropriate. Habeas is meant to dispense with executive discretion and call the jailor to account, and Respondents' wind up arguments should be rejected for at least two reasons.

*First*, Respondents' wind up arguments are not applicable to Petitioner in any event because he is not imprisoned pursuant to the laws-of-war or the AUMF. Rather, as explained in the Petition, he is a convicted criminal defendant who has completed his sentence. *See* Pet. ¶¶ 17 & n.6, 19, 27-28.[2] Respondents' wind up arguments also rely heavily on provisions in the Third and Fourth Geneva Conventions, *see* Gov't Br. at 11-12, and corresponding provisions in the

[2] Contrary to Respondents' claim that it is undisputed that Petitioner was subject to AUMF detention for the duration of his criminal sentence, *see* Gov't Br. at 3, Petitioner has not been subject to detention under AUMF, as informed by the laws of war, since he was charged and pled guilty to offenses under the Military Commissions Act in February 2012. *See* Pet. ¶¶ 15-19.

Defense Department's *Law of War Manual*, *see id.* at 13-14, 16, which Petitioner contends do not apply to him because he is not detained in the context of an international armed conflict between nation-states. *See* Pet. ¶¶ 58-59, 61. Respondents rely by analogy to Article 118 of the Third Geneva Convention, which Petitioner contends does not properly apply to him because he is not a prisoner of war. *See id.* Petitioner nonetheless notes that if Article 118 of the Third Geneva Convention and the related authorities cited by Respondents in support of their wind up arguments were applicable here, which they are not, that would necessarily mean that the conflict with Al Qaeda has ended and no detainee could be held indefinitely at Guantanamo. As Respondents acknowledge in their brief, wind up authority is a concept that arises when a war has ended. *See*, *e.g.*, Gov't Br. at 11 (wind up authority under Geneva Conventions applies "following the end of active hostilities"), *id.* at 14 (historically U.S. and its allies have wind up authority "following the end of major conflicts"). Yet, contrary to their wind up arguments, Respondents claim that the war with Al Qaeda continues, even if they do not dispute that Petitioner's involvement with Al Qaeda ended more than a decade ago. *See* Gov't Br. at 34-35 & n.14. Respondents in any event have moved to hold in abeyance briefing on these fundamental international law issues on which their wind up arguments rely.

*Second*, even if Petitioner were subject to law-of-war detention, which he is not, Respondents' wind up authority arguments have already been considered and rejected—twice—by this Court. As Respondents acknowledge, *see* Gov't Br. at 26 n.8, in *Qassim v. Bush*, the Court rejected the same wind up arguments that they assert here. 407 F. Supp. 2d 198, 200 (D.D.C. 2005) (Robertson, J.) (concluding wind up arguments are "unpersuasive" and "cut[ ] against the government" because alleged wind up period had exceeded six months). In that case, the Court granted a habeas petition filed by Uighur detainees held in law-of-war detention at

Guantanamo, who the government had concluded should be transferred, but whom the government had been unsuccessful in resettling, but the Court concluded that it lacked authority to order their release into the Naval Base or the United States.[3] *In re Guantanamo Bay Detainee Litigation*, 581 F. Supp. 2d 33 (D.D.C. 2008) (Urbina, J.) ("*Kiyemba*"), also involved a habeas challenge by Uighur detainees, who the government had concluded should be transferred, but whom the government had been unsuccessful in resettling. As in *Qassim*, the Court in *Kiyemba* rejected the same wind up arguments that the Respondents assert here and granted their habeas petition, but, unlike *Qassim*, ordered their release into the United States.[4]

In reaching that conclusion, the *Kiyemba* Court "assumed for sake of discussion" that the government has some residual wind up authority to hold law-of-war detainees while it attempts to transfer them, and applied a three-part test to determine when that authority ends. The Court in *Kiyemba* concluded that "the constitutional authority to 'wind up' detentions during wartime ceases once (1) detention becomes effectively indefinite; (2) there is a reasonable certainty that the petitioner will not return to the battlefield to fight against the United States; and (3) an

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[3] The petitioners in *Qassim* were resettled in Albania on the eve of oral argument before the D.C. Circuit in their appeal from the District Court's conclusion that there was no effective remedy for their unlawful detention despite granting their habeas petition. *See Qassim v. Bush*, 466 F.3d 1073, 1074-75 (D.C. Cir. 2006).

[4] The government did not appeal the Court's rejection of their wind up authority arguments or the ruling granting the writ. The appeal was limited to the issue of release into the United States. *See Kiyemba v. Obama*, 555 F.3d 1022 (D.C. Cir. 2009), *vacated and remanded*, 559 U.S. 131 (2010), *reinstated as amended*, 605 F.3d 1046 (D.C. Cir. 2010). Like the Uighur petitioners in *Qassim*—and proving once again that *having an order granting a habeas petition matters*—the Uighur petitioners in *Kiyemba* were offered resettlement opportunities after the Supreme Court granted certiorari to consider their transfer into the United States. *See Kiyemba v. Obama*, 563 U.S. 954, 954-56 (2011) (Breyer, Kennedy, Ginsburg, Sotomayor, JJ., statement respecting subsequent denial of certiorari, and explaining that if petitioners were not offered resettlement they would be free to raise the issue of their transfer into the United States again before the courts).

alternative legal justification has not been provided for continued detention. Once these elements are met, further detention is unconstitutional." *Kiyemba*, 581 F. Supp. 2d at 38.

Respondents do not even mention the *Kiyemba* test in their papers, let alone establish that they would prevail under it. But even assuming, *arguendo*, that Respondents have some wind up authority to hold Petitioner beyond the end of his sentence, which they do not, it is clear that authority would have ended under *Kiyemba*. First, Petitioner's imprisonment has become effectively indefinite. While Respondents may be "highly motivated" to transfer Petitioner, Gov't Br. at 16, and the State Department has made substantial efforts, at least for the last few months, to negotiate Petitioner's resettlement, including engagement with 11 countries concerning Petitioner's potential resettlement, Gov't Br., Ex. 2, at ¶ 7, those efforts have not been successful. The fact of the matter is that Respondents have had six months to transfer Petitioner since he completed his sentence, and not only have they been unsuccessful, as Respondents concede, there is no date by which Respondents anticipate that he will be transferred. *See* Gov't Br. at 18; *see also Qassim*, 407 F. Supp. 2d at 201 (recognizing "presumptive limit of six months").

Moreover, as set forth in Petitioner's motion for summary relief, Respondents have also known since at least April 2021 that Petitioner's sentence would end in March 2022, but they failed to take any steps to resettle him prior to the completion of his sentence. Respondents' claim that they could not have known Petitioner would complete his sentence in March, and thus could not take any steps before then to prepare for his resettlement, because the Convening Authority for Military Commissions had discretion to sentenced him within an effective range of 10-13 years with cooperation credit, is simply mistaken. *See* Gov't Br. at 6, 16, 21. Indeed, Respondents fundamentally misunderstand the terms of Petitioner's military commission plea

agreement. Unlike an Article III plea agreement, under the terms of Petitioner's original plea agreement, if he fulfilled his cooperation obligations—which no one has ever seriously disputed he had—the Convening Authority could not approve a sentence to exceed 19 years; if he failed to cooperate, however, the Convening Authority could approve a sentence not to exceed 25 years. In other words, if Petitioner cooperated, the Convening Authority had no discretion to sentence him within a range or middle ground between 19 and 25 years. Rather, cooperation credit was an all-or-nothing determination for purposes of applying the 19-year maximum sentencing limitation in his plea agreement.[5] Subsequently, with the modification of Petitioner's plea agreement in April 2021, the 19-year maximum with cooperation was reduced to 11 years, and the maximum sentence without cooperation was reduced to 14 years. In addition, the Military Judge had previously ordered that an additional year of sentencing credit was to be applied as a sanction for the prosecution's discovery violations. Consequently, with his cooperation, which, again, no one ever disputed, from April 2021 onward, Petitioner faced a maximum sentence of 10 years, with a maximum end date of March 1, 2022.

The second and third wind up factors in *Kiyemba* also decidedly cut in Petitioner's favor. As set forth in the Petition, and as Respondents do not dispute in their opposition, Petitioner cannot under any circumstances "return to the battlefield" or "take up arms once again" because Al Qaeda and others against whom he has cooperated *would kill him* based on his cooperation

[5] The all-or-nothing nature of the sentencing limit with cooperation was confirmed multiple times by the military judge, prosecution, defense, and Petitioner himself on the record at Petitioner's military commission trial between 2012 and 2021. *See, e.g.*, Tr. at 76-77, 168-73, 880-83. The Convening Authority also testified to the same understanding. *See* Tr. at 674-75. Indeed, in the 10 years that Petitioner's case was pending before a military commission at Guantanamo, before four different military judges and several prosecutors, not a single argument was put forward by any party to support the notion that the Convening Authority may approve a sentence within a range of imprisonment if Petitioner cooperated under the terms of his pretrial agreement.

with U.S. authorities for a decade. *See* Pet. ¶ 53. Nor, apart from wind up authority, do Respondents offer any other legal justification for Petitioner's continued imprisonment. To the contrary, Respondents assiduously seek to avoid litigating other legal issues related to the legality of Petitioner's continued imprisonment. Accordingly, applying the *Kiyemba* factors, Petitioner's continued imprisonment is unconstitutional.

### B. The Court Has Explicit Authority to Order Interim Habeas Relief

Respondents do not dispute that the Court has habeas authority to grant interim habeas relief, including conditional release, to remedy unlawful detention pending the Court's resolution of the matter or the State Department's efforts to resettle Petitioner. Nor do they dispute the Court's equitable authority to fashion any form of order that hastens release from unlawful imprisonment. Rather, Respondents contend that the Court has no authority to grant the specific interim relief Petitioner seeks here, including release into the custody of migration officials at the Naval Base or, if necessary, into the United States. Gov't Br. at 4, 23-32. For example, while Respondents notably do not claim that migration officials at the Naval Base are unable or unwilling to accommodate Petitioner, they contend that the Court has no authority to meddle in operations at the base.[6] Respondents are wrong.

As in initial matter, the authorities that Respondents cite in support of their wind up authority expressly authorize parole—release on conditions—into military encampments pending repatriation or permanent resettlement in another country. Article 118 of the Third Geneva

[6] Respondents' only attempt to suggest that Petitioner should not be absorbed into the existing migration system and structure is to point out that unlike the Cuban refugees who are interdicted in the Caribbean region and brought to the Naval Base for processing, Petitioner was not interdicted at sea. *See* Gov't Br. at 27-28. That may be true, but it is a distinction without a difference. Petitioner was captured and held elsewhere, and brought to Guantanamo in September 2006 against his will. He certainly did not arrive at Guantanamo voluntarily.

Conventions not only provides that prisoners must be released "without delay," for example, but Article 21 also provides that prisoners may "not be held in close confinement except where necessary to safeguard their health and then only during the continuation of the circumstances which make such confinement necessary," and "may be partially or wholly released on parole or promise, in so far as is allowed by the laws of the Power on which they depend." Geneva Convention Relative to the Treatment of Prisoners of War art. 21, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135, https://bit.ly/3SL18XM. In addition, Article 21 provides that "[s]uch measures shall be taken particularly in cases where this may contribute to the improvement of their state of health." *Id.*; *see also* Department of Defense, *Law of War Manual* § 9.11.2 n.192 (updated Dec. 2016), https://bit.ly/3SInxVM (enemy forces may be paroled); Department of Defense Directive 2310.01E, *DoD Detainee Program*, ¶ 3m(2) (Aug. 19, 2014), https://bit.ly/3PkUfcI ("Unprivileged belligerents may be released . . . [pursuant to] parole agreements by the detainee . . . .").[7] Indeed, the *Law of War Manual* specifically recognizes that certain law-of-war prisoners on parole may be permitted to travel not only within a military installation, but among different military installations. *See* Department of Defense, *Law of War Manual* § 9.24.4.3 n.579 (quoting Commentary 402 to Third Geneva Convention: "During the Second World War, prisoners' representatives were released on parole by some Detaining Powers in order to enable them to travel from one camp to another."); *see also generally* James Van Keuren, *World War II POW Camps in Ohio* (History Press 2018) (describing a parole system during World War II that allowed Italian prisoners to work without guards outside of POW camps in Ohio).

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[7] The Department of Defense cancelled and reissued this directive with substantially the same language on March 15, 2022. Department of Defense Directive 2310.01E, *DoD Detainee Program*, ¶ 3.12(c) (Mar. 15, 2022), https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/231001e.pdf?ver=6y1Oz3QqY1slOmu_p9g9Fw%3D%3D, ("UEBs may be released . . . [pursuant to] parole agreements . . . .").

In addition, while Respondents correctly point out that the Court in *Qassim* denied the Uighur detainees' request for parole into the Naval Base, citing lack of authority to order civilian access to a military base, that decision was issued prior to the Supreme Court's decision in *Boumediene* and the D.C. Circuit's decision in *Aamer v. Obama*, which specifically held that the Court has authority to order conditional release from unlawful conditions of imprisonment at Guantanamo. *See* 553 U.S. at 779 ("[T]he habeas court must have the power to order the conditional release of an individual unlawfully detained . . ."); *Aamer v. Obama*, 742 F.3d 1023, 1035 (D.C. Cir. 2014) ("[A] court may simply order the prisoner released unless the unlawful conditions are rectified, leaving it up to the government whether to respond by transferring the petitioner to a place where the unlawful conditions are absent or by eliminating the unlawful conditions in the petitioner's current place of confinement."). Respondents cite neither *Boumediene* nor *Aamer* in their brief, however, nor do they cite 28 U.S.C. § 2243, which expressly provides that the Court shall promptly dispose of a habeas case as "law and justice require."

Respondents also notably offer no explanation as to why, if the Court has habeas authority under the Suspension Clause to reach into Guantanamo and order Petitioner's release, including his conditional release, or affect his conditions of confinement at the prison, or, moreover, order civilians such as undersigned counsel to have access to Guantanamo, *see In re Guantanamo Bay Detainee Continued Access to Counsel*, 892 F. Supp. 2d 8, 28 (D.D.C. 2012) (Lamberth, C.J.), it nonetheless lacks authority to order Petitioner's release from imprisonment into the custody of migration officials at a different part of the base. Those officials are already responsible for assisting other non-U.S. citizen civilians at the base—many of whom move about and are employed with relative freedom while they await resettlement elsewhere. Indeed,

Respondents offer no evidence that Petitioner cannot be paroled into the Naval Station in a safe and orderly fashion. And to the extent the Court may have questions regarding the logistics of Petitioner's parole into the Naval Base, those could be addressed at a hearing if he is not promptly released.

The Court could likewise address at a hearing any issues concerning Petitioner's substantial and voluntary ties to the United States, should it deem his conditional release to this country to be necessary. For example, the Court could hear evidence from Petitioner or his U.S.-citizen family members about his existing legal status in this country, the real property he owned here, his employment and the taxes he paid here, and so forth. The Court could likewise take evidence to test Respondents' contention that he is inadmissible to the United States. *See* Gov't Br. at 31 n.12.

Respondents are also incorrect that Petitioner's parole into the United States is barred by the 2019 NDAA. *See* Gov't Br. 28-32. Respondents dispute Petitioner's contention that the statute does not apply to him because he is not a "detainee" for purposes of the statutory bar on transfers or release into the United States. They argue that because Khalid Sheikh Mohammed ("KSM") is specifically barred by name from transfer or release into the United States, and had been charged by military commission when the statute was enacted, this implies that "detainees" under the statute includes those like KSM who may be facing criminal charges, and thus Petitioner's status as a criminal defendant likewise does not except him from the transfer bar. *See* Gov't Br. at 29. But the fact that Congress specifically chose to bar KSM or any other detainee from entering the United States, whether or not they faced military commission charges, does not mean that Petitioner is likewise barred. Indeed, Respondents misconstrue Petitioner's argument. Petitioner is not a covered detainee for purposes of the 2019 NDAA because at the

time the statutory bar on transfers or release into the United States was enacted he had already been convicted. Moreover, even if he were at one point covered by the U.S. transfer ban, he is no longer subject to that provision because he is a criminal defendant who has been convicted and who has served his sentence. Simply stated, he is not a "detainee" in any sense of the word. *See* ECF No. 15, at 15.[8]

Respondents also fail to address Petitioner's contention that the statutory ban on transfers or release into the United States should not be read to displace the Court's habeas authority absent the clearest legislative command, which is lacking in the 2019 NDAA. Indeed, just as Respondents urge the Court to avoid the serious constitutional issues that they claim are raised by the Petition, the Court should likewise construe the 2019 NDAA's U.S. transfer ban to avoid the serious constitutional issues that the Executive raised itself when the ban was enacted. Statement on Signing the National Defense Authorization Act for Fiscal Year 2020, Daily Comp. Pres. Doc. 880, at 2 (Dec. 20, 2019) (2019 WL 7046887) (asserting that in certain circumstances the transfer ban "violates constitutional separation-of-powers principles, including the President's constitutional authority as Commander in Chief").

### C. The Court Should Deny Respondents' Cross-Motion for Abeyance

As noted at the outset, Respondents do not engage with 28 U.S.C. § 2243, *Boumediene*, or the other substantial authority cited in Petitioner's motion for summary relief that require the prompt disposition of Guantanamo habeas cases to ensure that the writ of habeas corpus is

[8] Nor is a change in status from detainee to criminal defendant unprecedented. For example, in 2014, the government changed the status of Irek Hamidullin, a Russian prisoner held for nearly five years as a law-of-war detainee in Afghanistan, to that of criminal defendant, and flew him to the United States where he was tried, convicted, and sentenced to life imprisonment in the Eastern District of Virginia for fighting with the Taliban against U.S forces in Afghanistan. *See United States v. Hamidullin*, 114 F. Supp. 3d 365, 369 (E.D. Va. 2015), *aff'd*, 888 F.3d 62 (4th Cir. 2018).

effective. Respondents instead cross-move entirely on prudential grounds for an order holding briefing on the merits of Petitioner's habeas claims in abeyance, indefinitely, because they expressly seek to avoid a ruling on the legality of his continued imprisonment. They argue specifically that Petitioner's arguments "implicate novel statutory interpretation issues; issues of international law; and constitutional issues, including separation of powers concerns, matters that the Court should not take up when there is no need for doing so because the Government is already working to provide Petitioner the requested resettlement relief. Rather, the Government respectfully asks that the Court permit Respondents time to complete their resettlement efforts." Gov't Br. at 4, 33-35. Respondents are particularly concerned because Petitioner's continued imprisonment involves legal claims expressly grounded in the Constitution or which have "have constitutional dimensions because they ask the Court to define new limits on the legal scope of Executive detention authority during wartime." Gov't Br. at 34. Their point is clear—they do not want the Court to rule on the legality of Petitioner's continued imprisonment because they fear such a ruling could imperil their law-of-war arguments in other areas, including where their ability to use force may depend on the continuation of an armed conflict with Al Qaeda. *See* Gov't Br. at 34-35.

Whatever the merits of Respondents' concerns in this regard, they provide no basis, as a matter of law, to deny Petitioner his constitutionally-protected right to challenge the factual and legal basis for his continued imprisonment without further delay. Far from seeking instantaneous release, as Respondent's claim, Petitioner has already waited six months since concluding his sentence, and each additional day that he waits compounds the substantive harm to him, the substantial harm that motivated him to file this case and seek relief. It is also important to recall that Petitioner has been in U.S. custody for nearly 20 years, including more than three years in

CIA black sites during which he was tortured, including beatings, sleep deprivation, waterboarding and anal rape, among other atrocities. *See* Pet. ¶7 & n.1. Yet he accepted responsibility for his own actions, pled guilty, cooperated with U.S. authorities for a decade despite his abysmal prior treatment, and served his full 10-year sentence. All of this is compounded by the fact that he has never met his daughter who was born after his capture, and his ongoing fears that his elderly father will not survive serious illness to see him released.

Petitioner Majid Khan should not be imprisoned a day longer, let alone made to wait indefinitely for his habeas claims to be resolved while Respondents work to resettle him. The most appropriate way to resolve this matter is to grant Petitioner's habeas petition and motion for summary relief, and then afford Respondents the additional time they seek on an incremental basis to resettle him while subject to the Court's direct supervision and contempt powers. If Petitioner is not transferred within 30 days thereafter, the Court should order a hearing to address interim habeas relief in the form of Petitioner's conditional release from imprisonment "as law and justice require." 28 U.S.C. § 2243.

A final point bears emphasis. Respondents suggest throughout their cross-motion for abeyance that there is no practical relief that this Court can order to remedy Petitioner's unlawful detention beyond Respondents' ongoing efforts to resettle him. *See*, *e.g.*, Gov't Br. at 22-23. That is demonstrably incorrect. While Petitioner is grateful for the State Department's recent efforts to transfer him, those efforts are not an adequate substitute for habeas relief. An order granting the writ of habeas corpus matters. It has practical effect, as illustrated not only by the *Gul* case, cited in Petitioner's motion for summary relief, but also the Uighur cases, *Qassim* and *Kiyemba*. While those prisoners were held for lengthy periods of time while the government

attempted to resettle them, it is no surprise or coincidence that they were finally transferred after the Courts granted their habeas petitions. *See supra* notes 3-4.

**CONCLUSION**

For the foregoing reasons, Petitioner's habeas petition and motion for summary relief should be granted, and Respondents' cross-motion for abeyance should be denied, in their entirety.

Dated: August 15, 2022

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 15, 2022, I caused the foregoing reply and cross-opposition to be filed with the Court and served on counsel for Respondents listed below by using the Court's CM/ECF system.

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