

continued harm that a favorable court decision could remedy. Indeed, Ragbir's opposition fails to identify plausible habeas relief that he could win. More than three years have passed since the allegedly retaliatory decision at issue in this case, and well over a year has passed since the time this Court suggested would be an appropriate delay in Ragbir's removal, were he to prevail on his claims. Ragbir has already won more than he could have gained from prevailing on the merits of his habeas claims, and they are therefore moot.

Argument

Ragbir's appeal is moot because there is no further relief he could obtain from the present proceeding. Ragbir's argument that relief could be granted "preventing the challenged First Amendment violation" miscasts the alleged First Amendment violation as ongoing or prospective. (Opp. 7, 9 ("ICE apparently intends to deport Mr. Ragbir imminently [in the future] on the basis of that unlawful, retaliatory decision [in 2018].")). If ICE removes Ragbir in the future, it will be on the basis of his concededly valid removal order, not a decision taken

approximately 40 months ago.² The panel’s majority opinion was clear that, despite its conclusion that Ragbir had stated a claim, “it does not necessarily follow that even if [Ragbir] proves that the officials sought to remove him as a result of his First Amendment speech, he may never be removed.” *Ragbir v. Homan*, 923 F.3d 53, 79 (2d Cir. 2019). Ragbir’s opposition to the present motion appears based on the opposite premise: that with the 2018 ICE decision (allegedly) tainted by retaliatory motives, all subsequent ICE efforts to remove Ragbir are extensions of that decision, and thus carry that same taint and cannot ever be effected, at least until the government makes some sort of undefined demonstration that its actions were permissible. That contradicts this Court’s opinion.

Even were the Court to accept Ragbir’s flawed premise, the passage of time (more than three years) has already demonstrated that whatever alleged retaliatory taint existed has dissipated. To the extent Ragbir argues that time could not possibly dissipate any taint, that is inconsistent with this Court’s understanding of this case. The Court

² Ragbir is correct that the decision in January 2018 is the “only decision ICE has ever made to deport Mr. Ragbir” (Opp. 9), but that is because ongoing litigation and stays of removal from courts have prevented further action.

acknowledged that the passage of time bears on the relief available to Ragbir, proposing January 2020 as a possible end to the period during which Ragbir's removal might be precluded. *See Ragbir*, 923 F.3d at 79. Ragbir attempts to dismiss the majority's statements as *dicta*, as not technically limiting the relief available to Ragbir, or as admitting some flexibility as to the precise time at which the taint will be dispelled (Opp. 11-13), but that misses the point for purposes of the mootness analysis: the explicit premise of the majority's observations was that, even if Ragbir were to show he was entitled to relief, the passage of time bears on what relief he could possibly win. *Ragbir*, 923 F.3d at 79 ("at least for the near future, the taint of the unconstitutional conduct could preclude removal"). It is now more than a year after the period the majority proposed as a possible limit to Ragbir's potential relief, and in light of this substantial passage of time, Ragbir has not explained how his theory of his case could still plausibly support relief.

This is particularly true because Ragbir would be proceeding solely under habeas jurisdiction protected by the Suspension Clause, due to Congress's express elimination of federal court jurisdiction over his claims. *See* 923 F.3d at 63-66. Ragbir does not meaningfully engage with

this point in his opposition to the government’s motion. Instead, he assumes that there is jurisdiction to enter declaratory and injunctive relief on his claims. (Opp. 10). But while this Court previously opined that “habeas relief would of course prevent the Government from deporting [Ragbir] for its duration,” 923 F.3d at 74, that by its terms assumes some end point in time to the habeas relief Ragbir could obtain. Given that Ragbir can only proceed under the “constitutional ‘minimum’” of the writ, 923 F.3d at 73, it is incumbent on him to demonstrate that relief is still appropriate even after 40-odd months have passed. He has not done so.

Ragbir’s reliance on *Hassoun v. Searls*, 976 F.3d 121 (2d Cir. 2020), is misplaced. In that case, an alien challenged his detention prior to his removal, and this Court concluded that steps taken to remove him, short of his actual removal, did not moot his challenge *to his detention*. But Ragbir is not challenging his detention (he is not detained) and is instead seeking to prevent his removal, on the basis of an alleged action taken more than three years ago. Unlike in *Hassoun*, where a court could still have ordered effective relief—namely, preventing the plaintiff’s detention prior to his removal—there is no relief a court could enter here

that would affect Ragbir because, as noted above, Ragbir is not challenging his final order of removal.

Ragbir's claims of gamesmanship are also misplaced. As an initial matter, Ragbir sought—and the government agreed to—time to respond to the present motion far beyond the ten days provided by Fed. R. App. P. 27, and then sought (again with the government's consent) two extensions of that time, belying his claims of delay by the government. (ECF Nos. 237, 241, 244, 248, 249 & 252). More broadly, the fact that the government sought relief from the Supreme Court, the length of time necessary for the government to decide to do so (which, as this Court is aware, is a process involving input from multiple agencies and culminating in a decision by the Solicitor General), and the time taken by the Supreme Court to act on (and then grant) the government's petition for certiorari are neither remarkable nor any indication of gamesmanship or bad faith. Put simply, “[i]t takes time to decide a case on appeal.” *Nken v. Holder*, 556 U.S. 418, 421 (2009). Moreover, Ragbir's reliance on the proximity between the government's petition for certiorari in February 2020 and the majority's proposed end of Ragbir's possible relief in January 2020 as evidence of gamesmanship miscasts both the

typical time frame in which the government sought further review, as well as the government's current argument for mootness. The government's position is not that this case necessarily became moot immediately in January 2020, but instead that the action is moot now, more than a year after January 2020, because at this point no plausible relief could be granted that would affect Ragbir's position.

Finally, Ragbir is incorrect that this case falls into the "capable of repetition yet evading review" exception to mootness (Opp. 15-16), which requires that "the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration." *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975). Ragbir's case has been reviewed repeatedly, including by the United States Supreme Court, over the past three years, more than enough time for the "capable of repetition yet evading review" exception to be entirely inapplicable. The reason Ragbir's case has not proceeded to the merits is not because the challenged action was "in its duration too short" to allow litigation, but instead because jurisdiction remains contested following a decision by the United States Supreme Court.

Conclusion

Accordingly, the Court should dismiss the appeal as moot, vacate the district court's May 23, 2018, Memorandum and Order, and remand the matter to the district court with instructions to dismiss as moot any claims seeking to stay, declare unlawful, or enjoin Ragbir's removal.

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Certificate of Compliance

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