United States District Court
Western District of Texas
San Antonio Division

Shahrokh Rahimi,
Petitioner,

v.

Markwayne Mullin, *et al*,
Respondents.

No. 5:26-CV-4331-JKP

Federal Respondents' Response to
Second Petition for Writ of Habeas Corpus

Federal Respondents provide the following response to Petitioner's ***second*** habeas petition. Any allegations that are not specifically admitted herein are denied. First, this successive petition should be denied as an abuse of the writ, because the District Court has already reviewed Petitioner's request for release from custody under the Due Process Clause and denied the claim on the merits and, alternatively, on jurisdiction. *See Rahimi v. Thomspon, et al*, 26-CV-1338-OLG, ECF Nos. 13, 23 (W.D. Tex. Apr. 7, 2026). Second, an immigration judge has twice denied bond to Petitioner based on flight risk while his removal order is on appeal, and Petitioner makes no showing as to why his continued detention on that basis is unconstitutional as applied to him.

There has been no intervening binding authority issued since April 2026 when District Court Judge Orlando Garcia denied further review of Petitioner's claims on these same facts, nor does Petitioner point to any manifest injustice in that decision that would merit review of a successive petition. Neither the Due Process Clause, nor the immigration statutes, entitle Petitioner to release from custody, especially where he has been found in the exercise of discretion to be a flight risk based on an order of removal entered against him by an immigration judge. Petitioner

remains subject to mandatory detention under 8 U.S.C. § 1225(b)(2) while his BIA appeal is pending. *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 498 (5th Cir. Feb. 6, 2026).

Indeed, he does not request a bond hearing in this petition, likely because **Petitioner has already been denied bond twice by an immigration judge due to flight risk**. So instead, he asks this Court to order his release directly. But Petitioner has not shown that his continued detention during removal proceedings is unconstitutional as applied to him. *See Huipe Ramos v. De Anda Ybarra*, No. 3:25–CV–00503–LS, 2026 WL 851992 at *2 (W.D. Tex. Mar. 27, 2026) (no due process violation where alien is detained on a mandatory basis during removal proceedings). This petition should be denied without further consideration.

PROCEDURAL HISTORY

Although creatively styled in this round as five separate claims for relief, **Petitioner's ultimate claim for release under the writ of habeas has been heard in full and denied on the merits.** On October 10, 2025, the first petition was filed in this district by the same counsel who filed the instant petition. *See Rahimi v. Thomspon, et al*, 26-CV-1338-OLG, ECF No. 1(W.D. Tex. Oct. 20, 2026). The parties fully briefed the issues, and this Court initially ruled in Petitioner's favor on December 4, 2025, ordering Federal Respondents "to either hold a bond hearing under § 1226(a) within fourteen days or release Petitioner." *Id.*, ECF No. 13 at 8. The Court ordered the case closed, but for status reports to confirm compliance. *Id.*

As ordered, Respondents provided the bond hearing on December 9, 2025, and then, also as ordered, filed a status report to advise the Court that Petitioner had been denied bond due to flight risk. *Id.*, ECF No. 14. Respondents attached the bond decision to the status report. *Id.* Petitioner filed a separate advisory the same day that attacked the factual bases for the immigration judge's discretionary judgement, arguing that if the judge had placed the burden on the

government, "Mr. Rahimi would be free." *Id.*, ECF No. 15 at 3. Apparently unbothered that District Court Judge Garcia had already closed the case on December 4, 2025, Petitioner continued to file *five additional filings* without leave of Court over a four-month period, most of which contained substantive legal arguments, contrary to local rules. *See id.*, ECF Nos. 16–20.

On March 24, 2026, Federal Respondents filed a seven-page opposition to these collective filings, to which Petitioner filed a length reply with exhibits. *Id.*, ECF Nos. 21–22. On April 7, 2026, District Judge Garcia issued a six-page order denying Petitioner's motion to alter or amend the judgment, finding that any amendment would be futile because requiring the alien to bear the burden of proof in a bond hearing **does not offend due process rights**. *Id.*, ECF No. 23 at 5–6. The Court denied the remaining motions as moot. *Id.*

On July 10, 2026, Petitioner filed the instant habeas petition, arguing he should be released from custody, despite having been ordered removed in 2025 a second time—fifteen years after the first time—and despite having been found by an immigration judge in 2025, and again in June 2026, to pose a flight risk due to that removal order. ECF No. 1 at ¶ 2. Petitioner further argues that the Court should rule that the government can re-detain him only after "applying to this Court for hearing where [the government] must demonstrate that Mr. Rahimi is a danger by clear and convincing evidence." *Id.* at 52. Attached to his petition, Petitioner provided the Court with 16 exhibits, the last of which included Judge Garica's orders from the first habeas petition. *See* ECF No. 1-2. Also included was an order from the immigration court dated June 12, 2026, denying bond for a second time and finding that Mr. Rahimi failed to demonstrate that his circumstances have materially changed such that he is no longer a flight risk. ECF No. 1-12 at 4.

Petitioner's habeas claims lack merit for the same reasons Judge Garcia failed to allow leave to amend the first habeas petition: **due process does not require the government to bear**

the burden of proof in a bond hearing, especially where the alien has already been ordered removed by an immigration judge and found twice to be a flight risk on the basis of that order. The petition should be denied in its entirety without a hearing.

ARGUMENT

As a threshold issue, this successive petition should be denied as an abuse of the writ of habeas corpus. *See Beras v. Johnson*, 978 F.3d 246, 252 (5th Cir. 2020) (noting the two circumstances where a habeas petition should be dismissed as an abuse of the writ: (1) raising a claim that could have been raised in the first petition, regardless of whether the failure was a deliberate choice; and (2) raising the same claim twice). Though styled differently, Petitioner, through the same counsel of record, raised in his initial habeas petition the same claims under the immigration statutes and the Due Process Clause as he makes here. *Id.* There is no indication in this record that Petitioner sought permission to file this successive petition. *See Kenga Tshishi v. Watkins, et al*, No. 3:26-CV-01263-LS (W.D. Tex. May 27, 2026). This alone calls for dismissal.

Even more egregious is that this successive habeas petition, filed contrary to Fifth Circuit precedent, follows an order issued five months after the initial habeas case closed, which expressly denied Petitioner's requests for further review of these exact facts. *See Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 n.9 (1982) (even a jurisdictional finding can trigger *res judicata*); *see also Boone v. Kurtz*, 617 F.2d 435, 436 (5th Cir. 1980) ("Although the dismissal of a complaint for lack of jurisdiction does not adjudicate the merit[s] so as to make the case *res judicata* on the substance of the asserted claim, it does adjudicate the court's jurisdiction, and a second complaint cannot command a second consideration of the same jurisdictional claims."). In denying further judicial review of Petitioner's initial habeas claim, Judge Garcia held, *inter alia*, that **1) due process does not require that the government bear the**

burden of proof in a bond hearing; and **(2) the district court lacks jurisdiction to review an attack on an immigration judge's discretionary factual findings that formed the basis of a bond decision**. Nonetheless, Petitioner renews his claims here without addressing *res judicata* or abuse of the writ and without even notifying the clerk's office upon filing that the case is related to a case previously pending with Judge Garcia. *See* ECF No. 1-1 at 1 (leaving blank the "related case(s), if any" section). As such, the case was randomly assigned to this Court, rather than to Judge Garcia, which gives the appearance of forum shopping.[1]

These legal issues, to the extent they are cognizable in habeas, have already fully briefed in the first cause of action, and they were even *decided in Petitioner's favor* when the district court ordered a bond hearing to determine his flight risk. Petitioner concedes that he filed an administrative appeal of the bond denial, which remains pending before the Board of Immigration Appeals (BIA). *See* ECF No. 1 at ¶ 75. He insists, however, that this Court should order his immediate release instead of requiring him to exhaust his administrative remedies on his pending bond appeal; it unduly prejudices him, he argues, to wait in line with similarly situated individuals who are also appealing their own flight risk findings during removal proceedings. *Id.* ¶ ¶ 74–79.

A person seeking habeas relief must first exhaust available administrative remedies. *Hinojosa v. Horn*, 896 F. 3d 305, 314 (5th Cir. 2018) (per curiam) (citing *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992) (per curiam)). Exhaustion has been a long-standing prerequisite to habeas relief. *Id.* There are approximately 3.74 million cases pending in immigration court. *See*, https://www.justice.gov/eoir/pr/eoir-announces-significant-immigration-court-milestones

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[1] Buried 30-pages within the instant petition, Petitioner eventually "acknowledges that he unsuccessfully urged a similar argument in his previous habeas proceedings" before Judge Garcia. *See* ECF No. 1 ¶¶ 111–12. Rather than explaining why this successive petition is nonetheless permissible under Fifth Circuit case law, Petitioner just simply asks for a second opinion on the merits.

(accessed Sept. 4, 2025). Federal district courts are not intended or equipped to be the reviewing court for all immigration bond determinations or decisions related to the institution of removal proceedings. 8 U.S.C. § 1226(e). "Congress has the power to balance the orderly adjudication of claims with concerns about remedying harms from illegal detention." *Khalil v. President, United States of Am.*, No. 25-2162, 2026 WL 111933, at *10 (3d Cir. Jan. 15, 2026). The balance that Congress struck in § 1226(e) removed jurisdiction from this Court to review discretionary bond determinations, funneling that review administratively to the BIA.

This Court should not overlook this abuse of the writ. Petitioner has been fully heard on his habeas claims, and he has received not one, but two bond hearings where he was found by an immigration judge to be a flight risk. While he argues those proceedings were unfair, his administrative appeal remains pending on both the bond decision and the underlying removal order. The Fifth Circuit on a petition for review of a final removal order is well equipped to entertain these due process claims. Regardless, Supreme Court precedent acknowledges that an alien whose removal order is on administrative appeal poses a greater flight risk than someone who has not been so ordered. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 544 (2021). And the parties agree that this Court cannot second-guess the discretionary factual findings of an immigration judge.

Due process does not require what Petitioner is demanding here. Rather than resubmit the same substantive arguments again, Federal Respondents respectfully request that this Court take judicial notice of their full due process arguments routinely submitted in similar habeas petitions for aliens detained under § 1225(b)(2)(A) during removal proceedings.

CONCLUSION

There has been no binding change in law since Judge Garcia ruled on the merits of these

claims, nor has Plaintiff presented any newly discovered evidence or manifest error of law or fact. Petitioner simply rehashes arguments that were already presented to and resolved against him by Judge Garcia. To the extent any new argument is presented, Petitioner fails to explain why he could not have previously presented it.

Respondents respectfully request that the Court deny this petition.

Respectfully submitted,

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