UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SHAHROKH RAHIMI,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
MARKWAYNE MULLIN; DAVID J. VENTURELLA; MIGUEL VERGARA; ROSE THOMPSON; TODD BLANCHE; DAREN K. MARGOLIN; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; U.S. DEPARTMENT OF JUSTICE; and U.S. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, in their official capacities,	)	**Case No. 5:26-cv-04331**
	)	
Respondents.	)	

REPLY IN SUPPORT OF PETITION FOR HABEAS CORPUS

In his Petition for Writ of Habeas Corpus, Shahrokh Rahimi states five distinct and meritorious claims as to why he is entitled to release because his ongoing and prolonged immigration detention violates his federal rights. *See generally* Dkt. 1. In response, the Government rails against his petition as "successive," insisting that it should be dismissed "as an abuse of the writ [of habeas corpus]" because (it alleges) he has re-raised claims from his first habeas petition. *See, e.g.*, Dkt. 4 at 1. Beyond that, and an offhanded and unsupported comment that Mr. Rahimi must be mandatorily detained under 8 U.S.C. § 1225(b)(2)(A), the Government fails to meaningfully address or refute any of Mr. Rahimi's claims. *See generally* Dkt 4.

The Government's assertion that Mr. Rahimi has abused the writ is incorrect. Counts 1–3—based on the Government's failure to follow its own rules—are plainly distinct from the claims in Mr. Rahimi's first habeas petition, since they rest on facts that did not exist at that time. And while his remaining two claims do rely in part on facts that existed at the time of his first habeas petition, they too could not have been alleged at that time. That is true for Count 4 (prolonged detention) because the length of his detention then did not yet qualify under the governing legal standard and he did not yet have a pending T-Visa application. And it is true for Count 5 (equal protection) because many of the facts underlying that claim did not yet exist, including the adverse bond and parole decisions that Mr. Rahimi challenges.

This Court should reject the Government's arguments that Mr. Rahimi is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and that he has abused the writ.

ARGUMENT

A. Mr. Rahimi is Not Detained Pursuant to 8 U.S.C. § 1225(b)(2)(A).

The Government (or "Respondents") declares without analysis that Mr. Rahimi is subject to mandatory detention under § 1225(b)(2)(A). *See* Dkt. 4 at 1–2, 6 (citing *Buenrostro-Mendez v.*

Bondi, 166 F.4th 494, 498 (5th Cir. 2026)). That is wrong. As a T-visa applicant, Mr. Rahimi's detention is governed by § 1226, which allows for bond hearings. *See* 8 C.F.R. § 1214.2 (stating that the detention of a T-visa applicant "will be governed by the provisions of [§ 1226] of this chapter."). The Fifth Circuit's decision in *Buenrostro-Mendez* is not to the contrary. This is because § 1214.2 "must" apply to "T visa applicants who would otherwise be subject to mandatory detention" or else "[the regulation] would be entirely superfluous" as the detention of noncitizens who are not applicants for admission and are seeking admission is *already* governed by § 1226. *De Souza Ribeiro v. Turek*, 825 F. Supp. 3d 413, 427 n.4 (D. Vt. 2026) (analyzing the regulation on the assumption that the government's arguments on § 1225(b)(2)(A)—later adopted by the *Buenrostro-Mendez* court—were correct).

But even if Mr. Rahimi were detained under § 1225(b)(2)(A), the Government would still have the authority to release him on parole as required by his *Accardi* claims. *See Matter of M-S-*, 27 I&N Dec. 509 (U.S. Atty. Gen. 2019) (holding that a person subject to mandatory detention under § 1225(b)(1) "must be detained until his removal proceedings conclude, unless he is granted parole."). Respondent's own policies confirm this: for example, the Fear-based Release Policy explicitly requires the release of people subject to mandatory detention. *See* Dkt. 1, Exh. 12 at 3. And this Court can always order release when a person is detained in violation of the Constitution—as Mr. Rahimi alleges in all five of his claims. *See e.g., Mendoza v. Noem,* 823 F. Supp. 3d 636, 651–52 (W.D. Tex. 2026).

B. Mr. Rahimi's Petition Does Not Constitute an Abuse of the Writ.

Next, "there are two circumstances where a § 2241 application" may constitute an "abuse of the writ." *Beras v. Johnson*, 978 F.3d 246, 252 (5th Cir. 2020). "First, a petitioner can abuse the writ by raising a claim in a subsequent petition that he could have raised in his first," and "[s]econd,

it is an abuse of the writ for a [petitioner] to raise the same claim a second time." *Id.* (cleaned up).[1] "[T]he government has the burden of pleading abuse of the writ," *McCleskey v. Zant*, 499 U.S. 467, 494 (1991), and "[a] district court's decision to dismiss a second or subsequent federal habeas corpus petition for abuse of the writ lies within its sound discretion," *James v. Cain*, 56 F.3d 662, 665 (5th Cir. 1995); *accord Ortiz-Lopez v. Fed. Bureau of Prisons, Dir.*, 830 F. App'x 127, 131 (5th Cir. 2020). In this case the Government has failed to carry its burden and Mr. Rahimi has not abused the writ. None of his claims could have been raised in his first habeas petition nor are they the same claims as those raised in that petition.

1. The Government Has Failed to Carry its Burden to Assert an Abuse of the Writ.

As a threshold matter, the Government meets its burden to plead abuse of the writ only "if, with *clarity and particularity*, it notes petitioner's prior writ history, identifies the claims that appear for the first time, and alleges that petitioner has abused the writ." *McCleskey*, 499 U.S. at 494 (emphasis added). Indeed, "[i]n asserting writ abuse the government is by necessity asserting that it is aware of no newly disclosed facts or changes in the law that would justify the filing of a successive petition." *Jones v. Estelle*, 722 F.2d 159, 164 (5th Cir. 1983).[2] Here, by contrast, the Government has not differentiated between any of Mr. Rahimi claims, much less identified which claims it believes are new. It also beggars belief to take the Government at its word that it is

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[1] Habeas petitions brought under § 2241 are not subject to the "heightened gatekeeping provisions" that govern § 2255 petitions. *Ortiz-Lopez v. Fed. Bureau of Prisons, Dir.*, 830 Fed. Appx. 127, 131 (5th Cir. 2020). Similarly, detainees bringing later petitions under § 2241 are not, as Respondents imply, subject to the § 2244(b) requirement that second-in-time § 2255 petitions seek leave of the Court of Appeals before filing. *Ortloff v. Fleming*, 88 F. App'x 715, 716 (5th Cir. 2004) (per curiam); *See also Stanko v. Davis*, 617 F.3d 1262, 1265–68 (10th Cir. 2010).

[2] The Government inaccurately suggests that Mr. Rahimi somehow engaged in gamesmanship and "[b]uried" the existence of his prior habeas proceedings. Dkt. 4 at 5 n.1. Mr. Rahimi made no effort to hide those prior proceedings, and indeed affirmatively described them where relevant. Dkt. 1 at ¶¶ 52–55, 61, 111–112.

unaware of any newly disclosed facts that would justify a new petition, given that virtually all of the facts underlying Mr. Rahimi's petition did not exist at the time of his first habeas petition. *See generally* Dkt 1; *infra* pp. 5–10. The Government has failed to carry its burden to plead abuse of the writ. That should end the inquiry.

2. Mr. Rahimi Has Not Abused the Writ.

Even if the government had not failed to meet its burden, none of Mr. Rahimi's five claims constitute an abuse of the writ because each is predicated on facts that did not exist at the time of his first habeas petition, which was filed before Judge Garcia on October 20, 2025. *See Rahimi v. Thompson*, 26-CV-1338-OLG, (W.D. Tex. filed Oct. 20, 2025).

a. Mr. Rahimi's October 20, 2025 petition is the benchmark for this analysis.

An abuse-of-the-writ analysis starts by identifying the prior petition or petitions whose claims could have a preclusive effect on the claims before the court. *See McCleskey*, 499 U.S. at 494. The Government at times appears to agree that Mr. Rahimi's October 20, 2025 petition is the filing to assess for preclusive effect. *See, e.g.*, Dkt. 4 at 2 (referring to Mr. Rahimi's "first petition" as his October petition). At other times, it seems to argue that Mr. Rahimi's December 19, 2025 Rule 59(e) motion to alter or amend the judgement, and its accompanying motion to amend his petition and proposed amended petition, together constitute the "petition" on which to base this Court's assessment of whether Mr. Rahimi is now abusing the writ. *See id.* at 4–5.

Both Fifth Circuit and Supreme Court precedent make it clear that Mr. Rahimi's October 20, 2025 petition is the relevant filing. For one, "Rule 59(e) motions should not be recategorized as successive applications regardless of their contents," *Thomas v. Lumpkin*, 995 F.3d 432, 440 (5th Cir. 2021) (citation omitted), and Mr. Rahimi's motion to amend was wholly dependent on, and part and parcel of, his Rule 59(e) motion, which Judge Garcia denied. *See Rosenzweig v. Azurix*

Corp., 332 F.3d 854, 864 (5th Cir. 2003) (stating that a district court must first grant a Rule 59 or 60 motion to alter or reopen the judgment before allowing amendment).

Even were that not the case, relief sought before disposition of a Rule 59 motion is sought *before* final judgment, and does not represent a successive petition, because "[a] Rule 59(e) motion briefly suspends [the] finality" of the judgment. *See Banister v. Davis*, 590 U.S. 504, 516 (2020); *accord Rivers v. Guerrero*, 605 U.S. 443, 453–54 (2025). Thus, a Rule 59(e) motion is "a limited continuation of the original proceeding," disposition of which "merges into the final judgment" of the initial habeas filing. *Banister*, 590 U.S. at 516. And "an amended petition, filed after the initial one but before judgment, is not second or successive." *Id.* at 512. As a result, neither Mr. Rahimi's Rule 59(e) motion nor the accompanying motion to amend during the Rule 59 period should be considered some sort of additional petition for purposes of the abuse-of-the-writ analysis.[3]

b. Mr. Rahimi's Claims Could Not Have Been Raised Earlier and Are Not the Same as Those in His First Petition.

None of Mr. Rahimi's five current claims were brought, or could have been brought, at the time of his October 20, 2025 petition.[4] There, he alleged the following: (1) the Government violated the INA by detaining him under 8 U.S.C. § 1225(b)(2)(A) instead of § 1226; (2) the Government violated the *Accardi* doctrine by failing to apply § 1226 bond regulations to him; (3)

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[3] In the interest of candor, Mr. Rahimi notes that a Fifth Circuit panel recently rejected this reasoning in a now-vacated opinion in *Ayestas v. Harris Cnty. Dist. Attorney's Off.*, 169 F.4th 586, 594–96 (5th Cir. 2026), *reh'g en banc granted, opinion vacated*, No. 25-70014, 2026 WL 1954516 (5th Cir. July 6, 2026). That opinion held the motion to amend fell outside Rule 59(e) because its claims "could have been but were not raised before the just-issued decision." *See id.* at 595. That's not the case here: the claims in Mr. Rahimi's Rule 59(e) motion and motion to amend rest on facts arising after his first petition. *See id.* at 595; *see generally* ECF No. 16, *Rahimi v. Thompson*, 26-CV-1338-OLG, (W.D. Tex. Filed Oct. 20, 2025).

[4] This assessment proceeds claim by claim, so even if the Court disagrees as to certain claims, it may still grant relief on the basis of any remaining claims. *See, e.g., Okwilagwe v. I.N.S.*, No. 3-01-CV-1416-BD, 2002 WL 356758, at *2–4 (N.D. Tex. Mar. 1, 2002) (rejecting three claims as abusive but granting the petition on one).

his detention without justification violated substantive due process; and (4) his detention without a bond hearing violated procedural due process. *See generally* ECF No. 1, *Rahimi v. Thompson*, 26-CV-1338-OLG, (W.D. Tex. filed Oct. 20, 2026). Judge Garcia ruled only on the first claim. Dkt. 1, Exh. 16-A at 4.

Counts 1, 2, and 3: Failure to Comply with Binding Policies and Rules

Mr. Rahimi begins with Counts 1, 2, and 3 of his petition. Each is predicated entirely on parole or bond determinations that occurred after his prior petition was adjudicated. As four Justices of the Supreme Court have recognized in the analogous situation of criminal detention, it is not an abuse of the writ for a petitioner to raise a claim that "occurred only after the denial of the first petition, such as the State's failure to grant the prisoner parole as required by state law." *Magwood v. Patterson*, 561 U.S. 320, 346 (2010) (Kennedy, J., dissenting) (collecting cases). To conclude otherwise "would be inconsistent with abuse-of-the-writ principles." *Id.* at 350.

Specifically, Count 1 of Mr. Rahimi's petition is that Respondents have violated the *Accardi* doctrine by refusing to release him under a mandatory ICE policy that requires the release of people with withholding of removal, absent extraordinary circumstances. An IJ reinstated Mr. Rahimi's withholding of removal on December 1, 2025, months after he filed his first petition. ICE denied his first request for first parole on April 30, 2026, and has not responded conclusively to a second request made on May 22, 2026. Dkt. 1, Exhs. 5–6.[5] Mr. Rahimi did not bring this claim

[5] Mr. Rahimi acknowledges that because his withholding was reinstated on December 1, 2025, it was possible for him to bring a similar *Accardi* claim on December 19. If the Court determines that his Rule 59(e) filing is the appropriate benchmark for abuse-of-the-writ analysis, the decision to dismiss Claim 1 still "lies within its sound discretion." *James v. Cain*, 56 F.3d at 665 (citation omitted). The current claim is different, however, insofar as it rests on ICE's failure to grant him parole after repeated requests. Moreover, the Government has not met its burden to plead that the claim should be barred as abusive for this reason. *See McCleskey*, 499 U.S. at 494. And Mr. Rahimi's conduct here does not resemble the conduct that traditional abuse-of-the-writ

in his first petition because he did not have withholding of removal when the petition was filed. *See* Dkt. 1 ¶ 53.

Count 2 of Mr. Rahimi's petition is that Respondents have violated the *Accardi* doctrine by failing to follow a mandatory ICE policy requiring the release of people with pending T-visa applications, absent extraordinary circumstances. Mr. Rahimi could not have brought this claim in his first petition because he submitted his T-visa application on April 24, 2026, six months after that petition was filed. *See* Dkt. 1 ¶ 64.

Count 3 of Mr. Rahimi's petition is that Respondents have violated his due process rights by denying him a bond hearing despite changed circumstances—his pending T-visa application. Agency rules require a bond hearing when an individual presents sufficiently changed circumstances such as a pending T- or U-visa application. Mr. Rahimi could not have brought this claim in his first petition because he submitted his T-visa application on April 24, 2026, and the IJ denied his request for a bond hearing on June 12, 2026. Dkt. 1 ¶ 64, 70.

The Government does not dispute any of these facts nor does it grapple with any of Mr. Rahimi's legal arguments. Instead, it erroneously asserts that Mr. Rahimi "raised in his initial habeas petition the same claims under the immigration statutes and the Due Process Clause as he makes here." *See* Dkt. 4 at 4. That argument fails as a matter of logic and of law. It cannot be the case that because Mr. Rahimi previously brought a Due Process Clause claim he is precluded from ever again challenging his detention under that Clause, no matter what new facts arise. His current Due Process claims (that now-existing facts require the Government to follow its own rules) are

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principles target—for example, he does not intend to "vex, harass, or delay" the Court by deliberately withholding a claim. *See Sanders v. United States,* 373 U.S. 1, 18 (1963).

analytically and logically distinct from his prior Due Process claim (that he could not be detained at all without a bond hearing). *Cf. Leal Garcia v. Quarterman*, 573 F.3d 214, 223 (5th Cir. 2009).

Count 4: Prolonged Detention

Although requiring slightly more nuance, the same is true for Count 4 (prolonged detention): it could not have been raised at the time of Mr. Rahimi's first habeas petition. Nor, as the Government argues, does *res judicata* bar him from bringing this claim. *See* Dkt. 4 at 4–5.

Mr. Rahimi acknowledges that his prolonged-detention claim necessarily rests in part on facts that existed at the time of his first habeas petition—that he has been detained since June 2025. But it also obviously involves facts that did not—the length of his detention *now*, as well as his now-pending T-Visa application. It is these latter and new facts that now qualify him for relief under the governing legal standards applicable to Count 4.[6] Mr. Rahimi clearly did not raise this claim or these facts in his first habeas petition. He does, however, acknowledge that he raised a *similar* claim in his Rule 59(e) motion to amend that petition, filed December 19, 2025, which Judge Garcia denied. *See* Dkt. 1 ¶¶ 111–113 (discussing the Rule 59(e) motion). As set out above, that filing is not a "petition" from which to assess abuse of the writ. Nevertheless, given the Government's focus on that briefing as establishing an abuse of the writ with respect to this claim, Dkt. 4 at 4–5, and in an abundance of caution, Mr. Rahimi will explain why he has not abused the writ even if that briefing is used as the document from which to assess that question.

First, the length of detention now is substantially longer than it was at the time of the Rule 59(e) motion, and "the detainee's interest in receiving due process protections grows larger with

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[6] *Compare, e.g.*, Dkt. 1 ¶ 108 (characterizing Mr. Rahimi's current detention as "prolonged") *with* ECF No. 1 ¶ 44, *Rahimi v. Thompson*, No. 5:25-cv-01338-OLG (W.D. Tex. Oct. 20, 2025) (Mr. Rahimi's first habeas petition, characterizing him as "fac[ing] prolonged detention").

every day in detention." *Ayobi v. Castro*, No. SA-19-CV-01311, 2020 WL 13411861, at *6 (W.D. Tex. Feb. 25, 2020). Second, Mr. Rahimi did not have a pending T-visa application at that time, which offers him a strong pathway to immigration relief, alters his flight-risk calculus, and necessitates a re-evaluation of his right to a bond hearing under the *Mathews v. Eldridge* factors. *See, e.g.*, *Covarrubias-Rodriguez v. Noem,* No. 5:26-CV-0594-JKP, at *10 (W.D. Tex. Apr. 23, 2026) (noting that the petitioner's pending application for asylum was one factor supporting a finding of a "high risk of erroneous deprivation" of liberty).

Moreover, in denying Mr. Rahimi's motion, Judge Garcia did not address Mr. Rahimi's argument that the length of his detention was a factor requiring the Government to bear the burden of proof. *See* Dkt. 1, Exh. 16-B. "Reraising a previously unaddressed claim is not abusive by any definition." *Magwood*, 561 U.S. at 346. In fact, Judge Garcia acknowledged other cases, with different facts, where it is appropriate for the government to bear the burden of proof. Dkt. 1, Exh. 16-B at 5 n.5 (citing *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Ayobi*, 2020 WL 13411861, at *7.) The claim is not abuse of the writ.

Lastly, Mr. Rahimi is not barred from bringing this claim by *res judicata* for the same reasons. Dismissal of a claim based on *res judicata* requires that "the same nucleus of operative facts" was involved in the prior action. *See Devins v. Armstrong*, 167 F.4th 247, 252 (5th Cir. 2026) (citation omitted). That is not the case here for the same reasons just discussed.

Count 5: Equal Protection

Finally, Mr. Rahimi could not have brought Count 5, his equal protection claim, at the time of his first habeas petition. This claim challenges his prolonged detention, the denial of his request for a bond hearing based on changed circumstances, and the denial of his parole request.

As with Count 4, Mr. Rahimi admits that the prolonged detention aspect of this claim rests in small part on facts that existed at the time of his first petition, *i.e.* that his prolonged detention necessarily includes the time he was detained before that petition. But the gravamen of the claim rests on the fact that how long he has *now* been detained is the product of animus. Moreover, the Government's denials of his requests for bond and parole occurred only *after* Mr. Rahimi's first petition, and similarly, evidence crucial to the claim became available only after he filed that petition. For example, Mr. Rahimi relies on bond data through the first five months of 2026 and detention-length data as of March 10, 2026. Dkt 1 ¶¶ 134–143. Further, Respondents' animus against detained Iranians has become more apparent over the past six months, as U.S.-Iran tensions have increased, and government officials have made further discriminatory comments. Dkt. 1 ¶¶ 147–71.[7]

This claim does not constitute an abuse of the writ. Indeed, the words "equal protection" appear nowhere in the Government's brief, nor does the Government acknowledge the existence of this claim.

3. CONCLUSION

Respondents have confined Mr. Rahimi in prison-like detention facilities for over a year, away from his wife and daughter. The Government does not contest the merits of any of his claims and has failed to establish that any constitute an abuse of the writ. The Court should grant his petition and order his release.

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[7] Mr. Rahimi notes that even though Respondents failed to contest any of his factual assertions, his Equal Protection claim is fact-intensive and may require further development of the record. The Court does not need to address this claim in order to grant full relief, but if it decides otherwise, Mr. Rahimi respectfully requests that the Court give the parties the opportunity to brief whether discovery is appropriate.

Dated: July 27, 2026

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CERTIFICATE OF SERVICE

I certify that on July 27, 2026, I filed this document through CM/ECF.

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