

**UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT**

MOHAMMED JIHAD BAHRM RASHID,

Petitioner,

-against-

GREG HALE, SUPERINTENDENT, NORTHWEST STATE CORRECTIONAL FACILITY – SAINT ALBANS; **DONALD J. TRUMP**, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; **PATRICIA HYDE**, IN HER OFFICIAL CAPACITY AS ACTING BOSTON FIELD OFFICE DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS; **VERMONT SUB-OFFICE DIRECTOR OF IMMIGRATION AND CUSTOMS ENFORCEMENT**, ENFORCEMENT AND REMOVAL OPERATIONS; **TODD M. LYONS**, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; **PETE R. FLORES**, IN HIS OFFICIAL CAPACITY AS ACTING COMMISSIONER FOR U.S. CUSTOMS AND BORDER PROTECTIONS; **KRISTI NOEM**, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY; **MARCO RUBIO**, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND **PAMELA BONDI**, IN HER OFFICIAL CAPACITY AS U.S. ATTORNEY GENERAL,

Respondents.

Case No. 2:25-cv-732

**REPLY TO
RESPONDENTS'
OPPOSITION TO
FILE AMENDED
HABEAS AND
SUPPLEMENTAL
BREIEFING**

INTRODUCTION

This case presents a constitutional challenge to the government's continued and prolonged detention of Mr. Rashid under an inapplicable and improperly applied statutory framework.

Contrary to Respondents' assertion, Petitioner's legal theory has not shifted but has been consistently rooted in the argument that Mr. Rashid's classification under 8 U.S.C. § 1225 is legally and constitutionally flawed: Mr. Rashid is a stowaway under immigration law and therefore not an "applicant for admission" subject to mandatory detention. Instead, he is entitled to individualized custody review under 8 U.S.C. § 1226. The Immigration Court's rigid application of *Matter of Yajure Hurtado* to bar a bond hearing despite Mr. Rashid's unique statutory classification has led to a constructive denial of due process. Multiple federal courts across the country have already rejected the blanket detention mandate imposed by *Hurtado* as unconstitutional. This Court now faces the same question: whether the government may indefinitely detain Mr. Rashid, without individualized review, based solely on an erroneous legal classification. Petitioner respectfully submits that it may not.

I. Respondents' Claim That Petitioner Altered Legal Theories Is Unfounded; Petitioner's Position Has Been Consistent and Supported by the Full Record

Respondents are mistaken in asserting that Mr. Rashid's legal theory shifted following oral argument. At the outset of this case, counsel had limited access to the full scope of Mr. Rashid's immigration history. Upon receipt and review of the complete record from Mr. Rashid's immigration attorney, Petitioner's position was not altered but further substantiated: Mr. Rashid's continued and prolonged detention is not authorized under the statute the government claims to invoke. Respondent now tries to posit that

Mr. Rashid has consistently maintained that the Department of Homeland Security ("DHS" or "the Department") is improperly applying a mandatory detention statute that does not apply to Mr. Rashid. As explained in prior filings, DHS continues to disregard the statutory distinction Congress has drawn for individuals classified as stowaways. The relevant statute makes clear that

stowaways are treated differently under immigration law and are categorically excluded from eligibility for admission:

“An arriving alien who is a stowaway is not eligible to apply for admission or to be admitted.” 8 U.S.C. § 1225(a)(2).

Despite this express language, DHS insists on applying a mandatory detention framework intended for noncitizens who are “applicants for admission” a status Mr. Rashid, as a stowaway, does not and cannot possess under the law.

This Court has authority to exercise its independent judgment in deciding whether an agency such as the Department of Homeland Security has acted within its statutory authority. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). Courts must “use every tool at their disposal to determine the best reading of the statute.” *Id.* at 400. Accordingly, this Court must determine whether the government has exceeded its statutory detention authority by detaining Mr. Rashid under Section 1225 (b)(1)(B). In exercising that authority, the Court may find that the Department of Homeland Security is improperly applying the statutory framework governing Mr. Rashid’s detention by treating it as mandatory when, by law, it is not. Such misapplication of the detention statutes not only exceeds the government’s lawful authority but also results in ongoing violations of Mr. Rashid’s rights under the Fourth, Fifth, and Eighth Amendments.

II. Respondents’ Assertion That *Matter of Yajure Hurtado* Has No Bearing on Mr. Rashid’s Constitutional Claims Is Incorrect; the Immigration Court’s Categorical Reliance on *Hurtado* Is Central to His Unlawful and Indefinite Detention Without Individualized Review

The Board of Immigration Appeals’ (the “Board”) decision in *Matter of Yajure Hurtado*, and the Immigration Court’s continued inability and refusal to revisit Mr. Rashid’s custody classification in light of that decision, lie at the core of Mr. Rashid’s constitutional challenge. Mr.

Rashid's detention and the denial of his bond request were explicitly based on the Immigration Judge's ("IJ") perceived lack of jurisdiction under *Hurtado*¹. See Exh. 1. The Immigration Court's rigid application of *Hurtado* to bar bond hearings for individuals deemed "arriving aliens" effectively foreclosed any individualized custody determination and triggered the very constitutional concerns this Petition raises.

Respondents' suggestion that *Hurtado* is irrelevant to Petitioner's constitutional claims is plainly incorrect. It is precisely because the Immigration Court applied *Hurtado* to Mr. Rashid's case—categorically denying him the opportunity for a bond hearing—that this habeas action remains necessary. Contrary to Respondents' assertion, *Hurtado* has had a direct, adverse, and unconstitutional impact on Mr. Rashid's liberty interest.

Moreover, Mr. Rashid's ability to fully brief the implications of *Hurtado* within ten days of its issuance was constrained by the recency of the decision, the rapidly evolving legal landscape, and the Immigration Court's own evolving interpretations. The rapidly evolving federal jurisprudence, both within this circuit and our sister circuits, directly addressing *Yajure Hurtado* and its impact on immigration proceedings and the appropriate federal response thereto could not be more relevant to Mr. Rashid's case. This impact and further development of caselaw sprung from *Yajure Hurtado* and therefore could not have been briefed immediately when *Yajure Hurtado* occurred. At that point, the impact remained to be seen. Furthermore, Respondent's contention that Counsel should have briefed *Hurtado* prior to it becoming the basis for the denial of bond and Petitioner's continued detention is erroneous. Once bond was denied by the Immigration Court

¹ Although not explicitly stated in the written order, it is evident from the record that the Immigration Judge concluded Mr. Rashid's detention is governed by 8 U.S.C. § 1225 and relied on the Board's decision in *Matter of Hurtado* to deny him a bond. When denying bond or rather denying the ability to consider the matter of bond over Counsel's argument, the Immigration Judge explicitly stated that though she was sympathetic to Mr. Rashid's circumstances, she could not consider the question of bond under current caselaw.

due to *Hurtado*, the necessity of briefing it and the legal implications springing from its application to Petitioner's case became ripe.

Federal courts are increasingly granting habeas corpus relief in cases where the government relies on *Hurtado* to justify prolonged detention without individualized review. These courts have recognized that *Hurtado* facilitates indefinite detention in violation of both the Fourth and Fifth Amendments. Mr. Rashid's detention is no exception. The Immigration Court's application of *Hurtado* to categorically deny bond is precisely the kind of arbitrary and indefinite detention the Constitution forbids. Thus, *Yajure Hurtado* could not be more pertinent to Mr. Rashid's claims.

III. Petitioner's Eighth Amendment Claim Is Neither Futile Nor Improper and Seeks Relief Within the Court's Established Habeas Jurisdiction

Respondents mischaracterize both the nature and purpose of Petitioner's request to amend the habeas petition and the relief sought. First, Mr. Rashid's proposed Eighth Amendment claim is not futile as Respondents contend. It asserts a distinct constitutional theory addressing the conditions and excessive duration of confinement, which has become punitive in nature. The Eighth Amendment prohibits cruel and unusual punishment, including prolonged civil detention that no longer bears a reasonable relation to its intended purpose. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Courts routinely allow such amendments under Federal Rule of Civil Procedure 15(a) when justice so requires. Fed. R. Civ. P. 15(a)(2). The government cannot contend that a violation of Mr. Rashid's constitutionally protected rights fails to meet this standard.

Second, Mr. Rashid does not seek relief beyond the authority of this Court. Habeas courts possess broad equitable authority to "dispose of the matter as law and justice require." 28 U.S.C. § 2243. That includes the power to:

- (1) Conduct a bond hearing, recognizing the insufficiency of bond before the immigration court. *Jimenez v. FCI Berlin*, No. 25-cv-326-LM-AJ, 2025 U.S. Dist. LEXIS 176165, at *2 (D.N.H. Sep. 8, 2025).
- (2) Order a bond hearing before an immigration judge, *see Pensamiento v. McDonald*, 315 F. Supp. 3d 684, 693 (D. Mass. 2018);
- (3) Hold a bail hearing. *Gomes v. US Dep't of Homeland Sec.*, 460 F. Supp. 3d 132, 144 (D. N.H. May 14, 2020).
- (4) Order release with appropriate conditions where continued detention violates constitutional limitations, *see Zadvydas*, 533 U.S. at 690;

Thus, Mr. Rashid's Eighth Amendment claim and requested remedies are legally sound, appropriately framed, and fall well within the traditional scope of habeas relief. The assertion that Petitioner improperly seeks "ultimate substantive relief" misstates both the nature of habeas jurisdiction and the scope of available remedies for constitutional violations.

IV. Petitioner's Motion to Extend the TRO Was Made in Good Faith to Preserve Mr. Rashid's Constitutional Rights and Ensure Effective Access to Counsel

Respondents' assertion that Petitioner's motion constitutes a delay tactic is unfounded. Mr. Rashid properly sought leave to file supplemental briefing and to amend the habeas petition in response to evolving legal and factual case developments, including the denial of bond based on a misapplication of immigration law. Mr. Rashid's corresponding request for an extension of the temporary restraining order (TRO) was made in good faith and grounded in the need to protect Mr. Rashid's constitutional rights during the pendency of his habeas petition. Far from attempting to delay the proceedings, Mr. Rashid acted to prevent the irreparable harm that would result from transferring Mr. Rashid out of the District of Vermont while pertinent changes to the facts of his

case and to relevant changes in federal caselaw are considered. Specifically, Mr. Rashid seeks to prevent any impairment of his ability to effectively litigate his claims and remain within reach of the relief sought before this Court.

Mr. Rashid promptly filed to amend his pending habeas petition as soon as practicable after the IJ denied bond in a custody redetermination hearing due to the IJ's perceived inability to consider the matter under the current state of the law. Respondents then waited until the final day of the 10-day filing deadline to submit their sparsely populated response in opposition. The government cries dilatory tactics after delaying proceedings to the full extent allowed under the law. Such an assertion is ill-founded and finds no support in logic, insofar as any delay to Mr. Rashid's proceedings fundamentally result in his suffering the very harm that he appears before this court to avoid – the deprivation of his liberty through his continued and prolonged detention.

Respondents' reliance on Rule 65(b) is also misplaced. While Rule 65(b) governs *ex parte* TROs, the TRO at issue here was issued after notice, full briefing, and oral argument. The government's reliance on Rule 65(b) is therefore improper. This Court granted Mr. Rashid's request for a TRO only after considering briefing and arguments by both parties. The government thus improperly relies on Rule 65(b)'s limitation on *ex parte* injunctions, and this Court was not constrained by Rule 65(b)(2)'s 14-day limitation as such.

Courts have the discretion to extend a TRO for "good cause" and such good cause plainly exists here. Good cause was established by the serious constitutional issues raised in the habeas petition and the practical obstacles that transfer would have imposed on Mr. Rashid's ability to litigate his case. Transfer would result in the loss of direct access to counsel and would further complicate communication and coordination essential to the effective presentation of his claims.

Additionally, transfer outside of this Court's jurisdiction would deprive Mr. Rashid of the relief sought before this Court. The burden thus imposed upon Mr. Rashid through a constructive denial of access to counsel far outweighs any logistical burden imposed upon the Department resulting from the TRO. Mr. Rashid would indeed suffer irreparable harm if transferred outside the jurisdiction of the very court through which he currently seeks redress for violations of his constitutional protections. Thus, far from constituting a delay tactic, Mr. Rashid's request was a necessary and justified effort to preserve Mr. Rashid's rights and allow for full and fair adjudication of his claims before this Court.

CONCLUSION

For the foregoing reasons, Mr. Rashid respectfully requests that this Court find that his current detention is improperly classified under 8 U.S.C. § 1225, and that his continued and prolonged confinement serves no legitimate governmental purpose. As such, his ongoing detention without individualized review, legitimate justification, or a clear endpoint, is unconstitutional and violative of the Fourth, Fifth, and Eighth Amendments to the United States Constitution and must be remedied by this Court as such.

Accordingly, Petitioner respectfully seeks the following relief:

1. Grant the proposed amendments to the habeas petition as submitted in the amended habeas petition;
2. Grant Counsel's request for additional briefing on the new matters of fact and law outlined above;
3. Grant prayers for relief as stated in the amended habeas petition.

Dated October 22, 2025

Respectfully submitted,

/s/ Nathan Virag

Nathan Virag, Esq.

Association of Africans Living in Vermont

20 Allen Street FL 3

Burlington, Vermont 05401

802-373-8055

Virag.nathan@gmail.com

Counsel for Petitioner

/s/ Andrew Pelcher

Andrew Pelcher, Esq.*

Vermont Asylum Assistance Project

P.O. Box 814, Elmwood Ave.

Burlington, VT 05402

(802) 713-8739

Andy@vaapvt.org

/s/ Emma Matters

Emma Matters, Esq.*

Vermont Asylum Assistance Project

P.O. Box 814, Elmwood Ave.

Burlington, VT 05402

(973) 985-5923

Emma@vaaptvt.org

** Motion for admission forthcoming*