

District Judge Tiffany M. Cartwright

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NEHRAL ALBERT RUIZ MALIWAT,

Petitioner,

v.

BRUCE SCOTT¹, *et al.*,

Respondents.

Case No. 2:25-cv-00788-TMC

FEDERAL RESPONDENTS'
RETURN AND MOTION TO DISMISS

Noted for Consideration:
June 17, 2025

I. INTRODUCTION

Petitioner Nehral Albert Ruiz Maliwat has failed to demonstrate that his mandatory immigration detention pursuant to 8 U.S.C. § 1225(b) “without a bond hearing has become unjustifiably and unreasonabl[y] prolonged in violation of the Due Process Clause of the Fifth Amendment.” Dkt. No. 1, Pet., at 27-28. U.S. Immigration and Customs Enforcement (“ICE”) lawfully detains Maliwat, a Philippines national and a lawful permanent resident of the United States, while he undergoes removal proceedings before the immigration court. Maliwat has been charged as inadmissible due to his military conviction of forcible rape. He has not

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney’s Office.

1 demonstrated that his continued detention without a bond hearing would be unreasonable.
2 Accordingly, this Court should deny his request for a court-ordered individualized bond hearing
3 and dismiss his Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 in its entirety.
4 This Return is supported by the previously filed Declaration of Christian De Castro (“De Castro
5 Decl.”) (Dkt. No. 20), and the Declaration of Michelle R. Lambert (“Lambert Decl.”) and
6 exhibits filed herewith.

7 **II. FACTUAL BACKGROUND**

8 Maliwat is a native and citizen of the Philippines who was admitted to the United States
9 with lawful permanent resident status in 2007. De Castro Decl., ¶¶ 3-4; Lambert Decl., Ex. A
10 (Form I-213). In 2011, he enlisted in the U.S. Air Force. Pet., ¶ 20. On August 28, 2013, a
11 General Court Martial found Maliwat guilty of Rape Using Force in violation of Article
12 120(A)(1) of the Uniform Code of Military Justice. De Castro Decl., ¶ 5; Pet., ¶ 21, Appx. A, at
13 DHS14-16.² Maliwat was sentenced to two years of confinement, forfeiture of all pay and
14 allowances, reduction to the grade of E-1, and a dishonorable discharge. De Castro Decl., ¶ 5.
15 Maliwat asserts that he received early release from confinement based on good behavior. Pet.,
16 ¶ 23. Maliwat has not provided information on when he separated from the U.S. Air Force and
17 whether his discharge was dishonorable.

18 On May 21, 2024, Maliwat sought admission into the United States as a returning lawful
19 permanent resident following a vacation to Mexico. De Castro Decl., ¶ 6; Pet., ¶ 26. Due to his
20 military conviction, U.S. Customs and Border Patrol (“CBP”) paroled him into the United
21 States for deferred inspection. De Castro Decl., ¶ 6; Pet., ¶ 26; Lambert Decl., Ex. B (Order to
22 Appear Deferred Inspection). CBP did not detain Maliwat. Pet., ¶ 26. The next month,
23

24 ² It should be noted that the two charges involved allegations by different women. The arrest referenced in the
Petition (¶ 22) involved allegations from a third woman. See Lambert Decl., ¶ 4.

1 Maliwat reported to CBP's deferred inspections where he was issued a Notice to Appear,
2 charging him as an arriving alien inadmissible under 8 U.S.C. § 1182(a)(2)(A)(i)(I), for a crime
3 involving moral turpitude. De Castro Decl., ¶ 7; Pet., ¶ 27; Lambert Decl., Ex. C (Notice to
4 Appear).

5 On July 15, 2024, ICE arrested Maliwat following his appearance at deferred inspection
6 and transferred him to the Northwest ICE Processing Center ("NWIPC") for detention pursuant
7 to 8 U.S.C. § 1225(b)(2). De Castro Decl., ¶¶ 7, 11; Pet., ¶ 28; Lambert Decl., Ex. D (I-213) &
8 Ex. E (Notice of Custody Determination). Maliwat is in ongoing removal proceedings before
9 the immigration court. De Castro Decl., ¶¶ 8-12.

10 The Immigration Judge ("IJ") has sustained the charges of inadmissibility in the Notice
11 to Appear and found that Maliwat's conviction constitutes a crime involving moral turpitude
12 and a valid conviction for immigration purposes. *Id.*, ¶ 8. Twice, the IJ has denied Maliwat's
13 bond redetermination requests due to lack of jurisdiction because of Maliwat's arriving alien
14 status under Section 1225(b). *Id.*, ¶ 12; Lambert Decl., Ex. F & G (IJ Orders). In December,
15 Maliwat filed an application for relief from removal. De Castro Decl., ¶ 10. His next
16 appearance before the IJ was initially scheduled for June 3, 2025. *Id.*, ¶ 9. However, the IJ
17 recently granted Maliwat's motion for a continuance of this hearing. Lambert Decl., Ex. H
18 (motion for continuance); Ex. I (IJ Order). The hearing has been rescheduled to September 4,
19 2025. *Id.*, Ex. J (Notice of In-Person Hearing).

20 **III. ARGUMENT**

21 This Court should deny the Petition because Maliwat has not shown that he is in ICE
22 custody in violation of the Constitution, law, or treaties of the United States. 28 U.S.C. § 2241.
23 Maliwat is detained under 8 U.S.C. § 1225(b), which mandates detention of arriving aliens
24 seeking admission to the United States. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 842 (2018).

1 The Supreme Court in *Jennings* rejected the Ninth Circuit's rule that mandatory detention
2 becomes unconstitutional after a presumptive six-month period. Accordingly, individuals
3 detained under Section 1225(b) are not entitled to an individualized bond hearing simply due to
4 the passage of time. Instead, courts assess whether the detention has become unreasonably
5 prolonged under due process balancing factors. *See Banda v. McAleenan*, 385 F. Supp. 3d
6 1099, 1117-118 (W.D. Wash. 2019). Maliwat claims that his continued detention without a
7 court-ordered bond hearing violates due process. Pet., ¶¶ 64-67. This claim lacks merit.

8 As a preliminary point, there is no dispute that Maliwat's detention during his removal
9 proceedings is statutorily mandated under 8 U.S.C. § 1225(b)(2). Pet., ¶ 36. Although he is a
10 lawful permanent resident, Maliwat became an arriving alien when he sought admission to the
11 United States last year because of his military rape conviction. 8 U.S.C. § 1182(a)(2)(A)(i); 8
12 U.S.C. § 1101(a)(13)(C)(v). Thus, Maliwat's detention remains statutorily mandated for the
13 duration of his removal proceedings. 8 U.S.C. § 1225(b)(2)(A).

14 The Supreme Court has considered whether 8 U.S.C. § 1225(b) imposes a time-limit on
15 the length of detention and whether such noncitizens detained under this statutory authority
16 have a statutory right to a bond hearing. *See Jennings v. Rodriguez*, 583 U.S. 281, 297-303
17 (2018). The Court rejected both arguments, holding that Section 1225(b) mandates detention
18 during the pendency of removal proceedings and provides no entitlement to a bond hearing. *See*
19 *id.*, at 303 ("Nothing in the statutory text imposes any limit on the length of detention."). The
20 Court further clarified that Section 1225(b) detainees may be released only through
21 discretionary parole under 8 U.S.C. § 1182(d)(5). *Id.*, at 300. While *Jennings* forecloses any
22 statutory or categorical constitutional right to a bond hearing under Section 1225(b), it did not
23 reach the issue of whether prolonged detention without such a hearing could, in individual
24 cases, raise a due process concern.

1 Maliwat's continued detention without a court-ordered bond hearing does not violate his
2 Fifth Amendment due process rights. Courts in this District analyze this issue using a multi-
3 factor test. *See Banda*, 385 F. Supp. 3d at 1116. In *Banda*, the district court found that the
4 petitioner's 17-month immigration detention pursuant to 8 U.S.C. § 1225(b) had become
5 unreasonable. *Id.*, at 1117-121. To conduct this analysis, the court analyzed six factors: (1)
6 length of detention; (2) how long detention is likely to continue absent judicial intervention; (3)
7 conditions of detention; (4) the nature and extent of any delays in the removal caused by the
8 petitioner; (5) the nature and extent of any delays caused by the government; and (6) the
9 likelihood that the final proceedings will culminate in a final order of removal. *See id.* An
10 analysis of these factors demonstrates that Maliwat's detention, while prolonged, has not
11 become unreasonable.

12 First, the length of Maliwat's detention is ten months. While Federal Respondents
13 acknowledge that Maliwat's detention has become prolonged, this Court should note that the
14 current length of his detention has not reached the length of what many courts have found to be
15 unreasonable. *See Hong v. Mayorkas*, No. 2:20-cv-1784, 2021 WL 8016749, at *5 (W.D.
16 Wash. June 8, 2021), *report and recommendation adopted*, 2022 WL 1078627 (W.D. Wash.
17 Apr. 11, 2022) (collecting cases finding prolonged detention from 13 months to 32 months
18 without a court-ordered bond hearing to have become unreasonable). Therefore, at worst, this
19 factor should be neutral.

20 Second, the length of Maliwat's future detention should favor Federal Respondents. He
21 asserts that the IJ's ruling on the classification of his conviction as a crime of moral turpitude
22 has been preserved for appeal. Pet., ¶ 45. But no appeal has been filed and an appeal may not
23 be necessary if he is granted relief from removal. But for the fact that his counsel sought a
24 continuance of the previously scheduled June hearing date, his detention could have ended at

1 that time if he had been successful with his application for relief from removal. Moreover, if he
2 has a strong claim for relief from removal, his detention could end at the continued hearing date.
3 Therefore, this Court should not accept Maliwat's argument concerning potential Ninth Circuit
4 appeals. Finally, the impact of his wife's recent filing of a Form I-130 on the length of his
5 detention is also speculative. This application is before another agency and has not been
6 adjudicated. Pet., ¶ 46. Accordingly, the second *Banda* factor should favor Federal
7 Respondents.

8 As for the third *Banda* factor, Maliwat is detained at the NWIPC. He asserts that "the
9 conditions of his criminal detention were substantially better [than the conditions at NWIPC]."
10 Pet., ¶ 49. Federal Respondents lack any information about Maliwat's conditions of
11 confinement at the Navy Brig in Charleston, North Carolina.

12 The fourth *Banda* factor assesses delays caused by the petitioner. This factor should
13 favor Federal Respondents. As the *Banda* Court noted, "Courts should be sensitive to the
14 possibility that dilatory tactics by the removable [noncitizen] may serve not only to put off the
15 final day of deportation, but also to compel a determination that the [noncitizen] must be
16 released because of the length of his incarceration." *Banda*, 385 F. Supp. 3d at 1119. Here,
17 Maliwat's counsel sought and obtained a continuance of his merits hearing initially scheduled
18 for June. Lambert Decl., Ex. H. Due to Maliwat's request for a continuance, that hearing is
19 now rescheduled for September. Lambert Decl., Ex. J. This delay is attributable solely to
20 Maliwat and reflects a deliberate litigation choice that postponed the adjudication of his
21 application for relief. But for that request, his detention could have concluded by June if he had
22 prevailed on the merits of his case. This weighs against finding that his continued detention has
23 become unreasonable.

1 While Maliwat is entitled to seek relief from removal, the pursuit of such relief does not,
2 standing alone, render mandatory detention unconstitutional. The Supreme Court has upheld
3 the government's authority to detain aliens without bond throughout removal proceedings –
4 even when they are pursuing relief. *See Demore v. Kim*, 538 U.S. 510, 531 (2003). Although
5 courts in this Circuit evaluate prolonged detention claims under due process balancing
6 frameworks such as *Banda*, those standards do not automatically entitle a petitioner to release.
7 Where, as here, Maliwat has delayed his own proceedings and remains in active litigation, the
8 length of detention does not rise to a level that warrants court-ordered bond hearing.

9 The fifth *Banda* factor, delays in the removal proceedings caused by the government,
10 should also favor Federal Respondents. The government has not delayed Maliwat's removal
11 proceedings. Maliwat attempts to frame the issue of the purported delay by focusing on the
12 timing of the government's *initiation* of his removal proceedings. Pet., ¶¶ 53-54. He makes no
13 assertion that the government has delayed the pending removal proceedings. Nor does he
14 provide any legal requirement that the government had a duty to exercise its discretion to bring
15 removal proceedings prior to when he sought admission to the United States as a reentering
16 lawful permanent resident in 2024. Therefore, this factor weighs strongly in favor of Federal
17 Respondents.

18 The last *Banda* factor weighs the likelihood that removal proceedings will result in a
19 final order of removal. Maliwat has been found guilty of forcible rape after a military court
20 martial. This is an extremely serious offense. As a result, he has been deemed inadmissible.
21 Maliwat has a pending application for relief from removal and asserts that he will be
22 challenging his removal under an additional basis. Pet., ¶ 56. But the IJ has not yet ruled on his
23 application from relief, and he has not even presented the additional challenge to removal.
24

1 While the government has a very strong case to obtain a final order of removal, this Court
2 should find this factor to be speculative.

3 Accordingly, this Court should find that Maliwat's continued detention without a court-
4 ordered bond hearing does not violate Due Process.³

5 **IV. CONCLUSION**

6 For the foregoing reasons, this Court should dismiss Maliwat's Petition in its entirety.

7 DATED this 20th day of May, 2025.

8 Respectfully submitted,

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16 *I certify that this memorandum contains 2,186*
17 *words, in compliance with the Local Civil Rules.*

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22 ³ If this Court does find that Maliwat is entitled to a court-ordered bond hearing, the bond hearing should be
23 conducted by an IJ. The Petition asserts that "this Court is authorized to hold a bond hearing." Pet., ¶ 58. Even
24 with such authority, this Court should decline to conduct the bond hearing as "courts in this Circuit have regularly
found that the IJ is the proper authority to conduct bond hearings and determine a detainee's risk of flight or
dangerousness to the community." *Doe v. Becerra*, 697 F. Supp. 3d 937, 948 (N.D. Cal. 2023), *appeal dismissed*,
No. 24-332, 2025 WL 252476 (9th Cir. Jan. 15, 2025).