

District Judge Tiffany M. Cartwright

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

NEHRAL ALBERT RUIZ MALIWAT,

Petitioner,

v.

BRUCE SCOTT, *et al.*,

Respondents.

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

FEDERAL RESPONDENTS'  
REPLY

Noted for Consideration:  
June 17, 2025

**I. INTRODUCTION**

This Court should dismiss Petitioner Nehral Albert Ruiz Maliwat's Habeas Petition. *See generally* Dkt. No. 23, Federal Respondent's Return and Motion to Dismiss ("Motion" or "Mot."). 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. Maliwat has failed to demonstrate that his continued mandatory immigration detention pursuant to 8 U.S.C. § 1225(b) without a court-ordered bond hearing violates due process. *See generally* Dkt. No. 25, Traverse.

1 Maliwat's detention continues to serve a legitimate purpose during his ongoing removal  
2 proceedings. The IJ has sustained the charges of inadmissibility in the Notice to Appear and  
3 found that Maliwat's conviction constitutes a crime involving moral turpitude. Mot., at 3.  
4 Maliwat is seeking relief from removal, and has sought a continuance to do so, extending the  
5 length of his detention.

6 Accordingly, this Court should deny his request for a court-ordered individualized bond  
7 hearing and dismiss his Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 in its  
8 entirety.

## 9 II. ARGUMENT

10 ICE lawfully detains Maliwat under 8 U.S.C. § 1225(b), which mandates detention of  
11 arriving aliens seeking admission to the United States. *See* Mot., at 2-8. In the Traverse,  
12 Maliwat requests this Court to order (1) his release, or in the alternative, (2) a bond hearing.  
13 Traverse, at 3. Neither request should be granted. First, a noncitizen is entitled to release if he  
14 can show that his immigration detention is indefinite as defined in *Zadvydas v. Davis*, 533 U.S.  
15 678 (2001). *Hong v. Mayorkas*, No. 2:20-cv-1784, 2021 WL 8016749, at \*6 (W.D. Wash. June  
16 8, 2021), *report and recommendation adopted*, 2022 WL 1078627 (W.D. Wash. Apr. 11, 2022).  
17 While Maliwat's detention has lasted approximately eleven months, his removal proceedings  
18 are ongoing, and his detention will end either through his removal from the United States or his  
19 release. There is no evidence that Maliwat's detention is indefinite. Second, his detention has  
20 not become unreasonably prolonged requiring a court-ordered bond hearing. *See* Mot., at 5-8.

21 As set forth in the Motion, the *Banda* factors do not support Maliwat's request for a  
22 bond hearing. *Id.* (setting forth due process analysis pursuant to *Banda v. McAleenan*, 385 F.  
23 Supp. 3d 1099, 1117-118 (W.D. Wash. 2019)). While relying on the arguments in the Motion,  
24 Federal Respondent also addresses the following specific points in the Traverse.

1 The length of Maliwat's detention (11 months) is at the lower end of what many courts  
2 have found to be unreasonable. Mot., at 5. Maliwat asserts that this "argument seems to  
3 suggest that . . . there is a bright line rule of a minimum of 13 months of detention before the  
4 detention becomes unconstitutionally prolonged." Traverse, at 5. This is an incorrect  
5 interpretation of Federal Respondent's argument. This argument relates to the first *Banda*  
6 factor – not the entire due process analysis. Federal Respondent does not believe that due  
7 process places any specific time limitation, or "bright line rule" on the length of mandatory  
8 detention. Specifically, this Court should reject Maliwat's proposed bright line rule. Traverse,  
9 at 6 ("Initially, this Court should apply a strong presumption that detention greater than six  
10 months – and certainly detention lasting nearly a year – violates due process.").

11 Maliwat's reliance on the Supreme Court's six-month presumptive limitation on  
12 detention pursuant to 8 U.S.C. § 1231(a)(6) is misplaced. Traverse, at 6 (citing *Zadvydas v.*  
13 *Davis*, 533 U.S. 678 (2001)). *Zadvydas* imposed a six-month presumptive limit on detention  
14 not as a constitutional mandate but as a matter of interpretation of a statute different from the  
15 one at issue here. 533 U.S. at 699. The justifications for adopting that presumption in  
16 *Zadvydas* are absent here because the two cases are "materially different." See *Demore v. Kim*,  
17 538 U.S. 510, 527 (2003). And the Supreme Court in *Zadvydas* did not suggest that the Due  
18 Process Clause itself imposed a six-month limitation on the duration of mandatory immigration  
19 custody as a general matter. Rather, the Supreme Court concluded that six months was a  
20 "presumptively reasonable" time during which detention after entry of a final order of removal  
21 continued to serve the particular immigration purpose at issue there: to effectuate the final order  
22 that the noncitizen be removed. *Zadvydas*, 533 U.S. at 701. And even then, there was no rigid  
23 six-month rule or requirement of a bond hearing – the noncitizen could continue to be detained  
24 beyond that point, without a bond hearing, if he failed to provide a good reason to believe that

1 there was no significant likelihood of his removal in the reasonably foreseeable future. *Id.*

2 Thus, there is no reason for a six-month presumption or any bright line rule to be imposed here.

3 This Court should reject Maliwat's attempts to collapse the various multi-part due  
4 process analyses for immigration detention to only the consideration of the length of detention.  
5 For example, Maliwat asserts that a district court recently "found a 12-month mandatory  
6 detention under § 1226(c) to be unconstitutionally prolonged."<sup>1</sup> Traverse, at 8 (citing *Calderon*  
7 *v. Bostock*, No. 2:2-cv-1619, 2025 WL 879718 (W.D. Wash. Mar. 21, 2025). In *Calderon*, a  
8 convicted murderer that had been detained by ICE for a year alleged that his ongoing detention  
9 without a bond hearing violated due process. The district court performed a multi-factor due  
10 process analysis applicable to his mandatory detention statute and determined that his continued  
11 detention without a bond hearing would be unreasonable. *See Calderon v. Bostock*, No. 2:24-  
12 CV-01619-MJP-GJL, 2025 WL 1047578, at \*4-7 (W.D. Wash. Jan. 17, 2025), report and  
13 recommendation adopted in part, rejected in part, No. 2:24-CV-01619-MJP-GJL, 2025 WL  
14 879718 (W.D. Wash. Mar. 21, 2025). Maliwat's emphasis on the duration of Calderon's  
15 detention alone, negates the fact that the court performed a multi-part due process analysis.

16 The second *Banda* factor considers how long detention is likely to continue absent  
17 judicial intervention. *See Mot.*, at 5-6. While there will necessarily be some speculation, this  
18 *Banda* factor should still be tethered to the reality of the petitioner's proceedings. Maliwat asks  
19 this Court to infer the possibility of future administrative and judicial appeals when deciding  
20 this factor. Traverse, at 10-11. While such speculation could add months to his detention, it is  
21 not the reality of his present proceedings. Maliwat has not filed an administrative appeal like  
22 the petitioner in *Banda*. Traverse, at 10. Nor has he filed a petition for review with the Ninth

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24 <sup>1</sup> At the time the district court adopted in part the magistrate's report and recommendation, Calderon had been  
detained for approximately 17 months.

1 Circuit like the petitioner in *Calderon*. *Id.* In contrast, any assessment of future administrative  
2 or judicial appeals in Maliwat's proceedings would require pure speculation. This factor should  
3 favor Federal Respondents or be neutral. Mot., at 5-6.

4 As to the fourth *Banda* factor, Maliwat does not dispute that he has sought a continuance  
5 in his removal proceedings, which has prolonged the proceedings until at least September.  
6 Traverse, at 12-13. Nor does he dispute that his detention could have ended in June if he had  
7 obtained relief from removal if he had not sought the continuance. *Id.* Instead, he asks this  
8 Court to ignore these facts because he alleges that his request for a continuance was bona fide.  
9 While recognizing that petitioners are entitled to raise legitimate defenses, Maliwat has delayed  
10 the proceeding and, in turn, the length of his detention.

11 Finally, for the first time, Maliwat requests that any court-ordered bond hearing require  
12 the Immigration Judge ("IJ") to consider alternatives to detention and to record the hearing.  
13 Traverse, at 3. This Court should not allow Maliwat to raise new requests for relief in a traverse  
14 that were not raised in the Petition. Furthermore, Maliwat provides no legal support for his  
15 request that the IJ consider alternatives to detention if a bond hearing is ordered. If an IJ found  
16 Maliwat to be a danger to the community, due process does not require an IJ to consider  
17 alternatives to detention. *Martinez v. Clark*, 124 F.4th 775, 786 (9th Cir. 2024).

18 Accordingly, this Court should find that Maliwat's continued detention without a court-  
19 ordered bond hearing does not violate due process.<sup>2</sup>

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22 <sup>2</sup> 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; *see also*  
24 Traverse, at 16-17. Even 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).

