

District Judge Tiffany M. Cartwright
Magistrate Judge Brian A. Tsuchida

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

JESUS BENTO CARDOZO, *et al.*,

Petitioners,

v.

CAMMILLA WAMSLEY, *et al.*,

Respondents.

Case No. 2:25-cv-00871-TMC-BAT

FEDERAL RESPONDENTS' REPLY IN
SUPPORT OF THE RETURN AND
MOTION TO DISMISS

Noted for Consideration:
July 25, 2025

I. INTRODUCTION

This Court should deny Petitioners' requests for court-ordered bond hearings because they have not demonstrated that their continued immigration detention without individualized bond hearings would be unreasonable. *See generally* Dkt. No. 11, Fed. Resp. Return & Mot. To Dismiss ("Motion" or "Mot."). Petitioners do not dispute that they are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b). Instead, they contend that their continued detention without court-ordered bond hearings violates due process. *See* Dkt. No. 18, Resp., at 3-16.

The main thrust of Petitioners' claim is that their prolonged detention is unlawful, while conceding that much of the delay in their proceedings has been due to the Immigration Court's efforts to find appropriate interpreters to provide Petitioners with a meaningful opportunity to

1 participate in their removal proceedings, *i.e.*, protect their due process rights. In essence,
2 Petitioners ask this Court to disregard the substantial steps taken by the Immigration Court and
3 find that Petitioners' detention is unlawful based the factors in *Banda v. McAleenan*, 385 F.
4 Supp. 3d 1099, 1117-118 (W.D. Wash. 2019). But the Immigration Court's *necessary* steps
5 should heavily favor a finding that Petitioners' detention has not become unreasonable and
6 dismiss the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 in its entirety.

7 **II. FACTUAL DEVELOPMENTS**

8 Of the five Petitioners, only three remain part of this litigation: Petitioners Fernandes,
9 Belhaj, and Khadaj. Petitioners Cardozo and Boulhjar have accepted voluntary departure and
10 have withdrawn their claims here. Resp., at 2. Recently, Petitioner Fernandes has also accepted
11 voluntary departure. Lambert Decl., Ex. P, Order, dated Jul. 23, 2025. He has until August 22,
12 2025, to depart the United States. *Id.* At that time, his detention will end. Yesterday, Petitioner
13 Belhaj withdrew his application for relief from removal and was ordered removed. *Id.*, Ex. Q,
14 Order, dated Jul. 24, 2025. Belhaj waived his right to appeal, and that order is now final. *Id.*

15 As a result, Khadaj is the only remaining petitioner moving forward with his removal
16 proceedings.

17 **III. ARGUMENT¹**

18 The *Banda* factors favor this Court finding that Petitioner Khadaj's detention has not
19 become unreasonable. Mot., at 10-15. As set forth in the Motion, the six *Banda* factors favor
20 this result.

21 First, the length of Khadaj's detention, as well as the likely duration of his future
22 detention, should be assessed by this Court as neutral. Mot., at 11-12. There is no dispute that

23
24 ¹ Federal Respondents rely on the arguments in the Motion and only address specific points raised in Petitioners' Response here.

1 his detention has exceeded six months. But this Court should not adopt Petitioners' suggestion
2 that this Court "apply a strong presumption that detention exceeding six months violates due
3 process." Resp., at 5. Despite their denial, this request is in the same vein as a suggestion for a
4 bright-line rule finding that detention of more than six months violates due process. Resp., at 5
5 n.1. And as they admit, this type of rule has been rejected by courts. *Id.*

6 The Supreme Court's implicit six-month presumptive reasonableness period for post-
7 order detention is not relevant here. Resp., at 5 (citing *Zadvydas v. Davis*, 533 U.S. 678, 701
8 (2001)). In *Zadvydas*, the Supreme Court found that post-order detention could potentially
9 become indefinite as authorized under the open-ended terms of 8 U.S.C. § 1231(a)(6). Finding
10 the possibility of indefinite detention troublesome, the Supreme Court clarified that there is a
11 point at which Congress's interest in detaining a noncitizen to facilitate his removal may
12 eventually give way to the noncitizen's liberty interest. This shift occurs when detention
13 becomes potentially indefinite. *Zadvydas*, 533 U.S. at 690 ("A statute permitting indefinite
14 detention of an alien would raise a serious constitutional problem."). But this case involves
15 Section 1225(b) detention, not Section 1231(a)(6) detention. Thus, the same potential for
16 indefinite detention is not a risk under Section 1225(b) detention. Unlike Section 1231(a)(6),
17 Section 1225(b) cannot "reasonably be read to limit detention to six months." *Jennings v.*
18 *Rodriguez*, 583 U.S. 281, 301 (2018).

19 Furthermore, any assessment of Petitioner Khadaj's likely duration of future detention
20 (*Banda* Factor 2) would be speculative. Mot., at 12. Petitioners' assertions and recent
21 developments prove this point. Petitioners argue that Belhaj, Khadaj, and Fernandes "are
22 seeking asylum" and "still have at least two to three months of proceedings before the
23 immigration court." Resp., at 7. But Fernandes has accepted voluntary departure to occur before
24

1 August 22, 2025. His detention with end in a month or less. Similarly, Belhaj has withdrawn his
2 request for relief from removal and has been ordered removed to Morocco.

3 Additionally, this Court should not consider “administrative and judicial appeals” at this
4 stage of the case. Resp., at 6-7. Although the *Banda* court considered the length of the appeal
5 process, the facts in *Banda* are distinguishable from here. In *Banda*, the petitioner had
6 commenced the administrative appeal process. 385 F. Supp. 3d at 1119. Thus, the court’s
7 consideration of the length of future appeals processes had some realistic connection to the
8 petitioner’s proceedings. Here, in contrast, Petitioner Khadaj intends to seek relief from
9 removal, which if granted, could end his detention without any appeal process. Or, like Belhaj
10 and Fernandes, Khadaj may decide to leave the United States without further proceedings. As a
11 result, the facts here require this Court to speculate on a greater scale than the analysis required
12 in *Banda*.

13 Second, the *Banda* delay factors do not favor Khadaj. Mot., at 13-14. Most of the delay
14 in his removal proceedings have occurred due to the Immigration Court’s search for interpreters.
15 The Immigration Court’s actions were reasonable when faced with the need to find appropriate
16 interpreters without knowing the specific interpreter needed and with limited availability of
17 interpreters in the languages sought.

18 Khadaj asserts that he only speaks “Tamazight, and the dialect is Tachelhit.”² Dkt. No. 6,
19 Khadaj Decl., ¶ 2. But there is no assertion that he communicated this during his proceedings.
20 At Khadaj’s April hearing, a Tachelhit interpreter was present, but Khadaj could not understand
21 him. Mot., at 7. The following month, the Immigration Court had a Tamazight interpreter
22 present, who Khadaj also could not understand. *Id.* In June, Khadaj could finally understand the
23 Berber/Tachelhit interpreter, who the Immigration Court located as a result of the prior

24 ² Petitioners use the spelling “Tachelhit” while the Government uses “Tachelhit.”

1 interpreter's attempts to communicate with him. The facts demonstrate that this was not a
2 straightforward process and multiple hearings were required. Thus, the delay factors should
3 favor Federal Respondents.

4 Overall, the *Banda* factors support the dismissal of Khadaj's habeas claims. *See* Mot., at
5 10-15.

6 **IV. CONCLUSION**

7 This Court should find that Petitioners' continued detentions without court-ordered bond
8 hearings do not violate Due Process. Petitioners are lawfully detained pursuant to 8 U.S.C.
9 § 1225(b) and their detentions have not become unreasonable. Four Petitioners are no longer in
10 active removal proceedings and either have departed or will depart the United States shortly.
11 The delays in Petitioners' detention are due to the Immigration Court's reasonable actions to
12 provide appropriate interpreters to provide Petitioners with due process in their removal
13 proceedings. Thus, this Court should deny Petitioners' request for a writ of habeas corpus and
14 dismiss the Petition in its entirety.

15 //

16
17 //

18
19 //

20
21 //

22
23 //

1 DATED this 25th day of July, 2025.

2 Respectfully submitted,

3 TEAL LUTHY MILLER
4 Acting United States Attorney

s/ Michelle R. Lambert

5 MICHELLE R. LAMBERT, NYS #4666657
6 Assistant United States Attorney
7 United States Attorney's Office
8 Western District of Washington
9 1201 Pacific Avenue, Suite 700
Tacoma, Washington 98402
Phone: (253) 428-3824
Fax: (253) 428-3826
Email: michelle.lambert@usdoj.gov

10 *Attorneys for Federal Respondents*

11 *I certify that this memorandum contains 1,191*
12 *words, in compliance with the Local Civil Rules.*