District Judge Tiffany M. Cartwright

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

JESUS BENTO CARDOZO, *et al.*, Petitioners, v. CAMMILA WAMSLEY, *et al.*, Respondents.	Case No. 2:25-cv-00871-TMC RESPONSE IN OPPOSITION TO PETITIONER'S OBJECTIONS TO THE REPORT AND RECOMMENDATION Noted for Consideration: August 26, 2025

INTRODUCTION

Although the Report and Recommendation (Dkt. No. 25 "R&R") favored Petitioner Moulad Ben Khadaj[1] overall, he objects to three points in the R&R. Dkt. No. 26, Obj. to R&R. Each objection should be overruled. First, Khadaj argues that the R&R incorrectly found that the delay factor should weigh against the Government. Second, he argues that 8 U.S.C. § 1225(b)(2) should be declared unconstitutional as applied in this case. Third, Khadaj asks that this Court order a bond hearing in 14 days rather than the 35 days recommended by the R&R. But the R&R correctly decided each of these issues and this Court has no reason to modify the R&R with Petitioner's desired modifications.

[1] Khadaj is the only remaining Petitioner in this litigation.

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ARGUMENT

A. The R&R correctly concluded that the fifth *Banda* factor is neutral.

The main issue in this habeas litigation is whether Belhaj's continued immigration detention pursuant to 8 U.S.C. § 1225(b) without a court-ordered bond hearing would violate due process. Courts in this District analyze this issue using a multi-factor test. *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1117-118 (W.D. Wash. 2019) ("*Banda* test"). This analysis includes six factors: (1) length of detention; (2) how long detention is likely to continue absent judicial intervention; (3) conditions of detention; (4) the nature and extent of any delays in the removal caused by the petitioner; (5) the nature and extent of any delays caused by the government; and (6) the likelihood that the final proceedings will culminate in a final order of removal. *See id.*

Using the *Banda* test, the R&R found that the first and third factors favor Khadaj, while the remaining factors are neutral and favor neither side. R&R, at 8-11. Khadaj now objects to the R&R's finding that the fifth Banda factor, delay caused by the Government, is neutral. Obj., at 1-2. But this finding was correct.

Federal Respondents do not deny that Khadaj's removal proceedings were delayed while the immigration court located an appropriate interpreter to provide him with a meaningful opportunity to participate in his removal proceedings, *i.e.*, protect his due process rights. *See* Dkt No. 11, Return, at 8-9. Khadaj asserts that he only speaks "Tamazight, and the dialect is Tashelhit.[2]" Dkt. No. 6, Khadaj Decl., ¶ 2. But there is no assertion that he communicated this during his proceedings. At Khadaj's April hearing, a Tachelhit interpreter was present, but Khadaj could not understand him. Mot., at 7. The following month, the Immigration Court had a Tamazight interpreter present, who Khadaj also could not understand. *Id.* In June, Khadaj

[2] Petitioners use the spelling "Tashelhit" while the Government uses "Tachelhit."

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could finally understand the Berber/Tachelhit interpreter, who the Immigration Court located as a result of the prior interpreter's attempts to communicate with him. The facts demonstrate that this was not a straightforward process and multiple hearings were required.

Khadaj objects to the R&R's finding that the delay factor is neutral by minimizing the Immigration Court's efforts "to calling an interpreter line at each hearing and hoping that an interpreter might be available." Obj., at 1. This completely ignores the significant effort used by the Immigration Court to locate the appropriate Tachelhit interpreter. Even Khadaj's counsel in this litigation used a relative to interpret for Khadaj, rather than using a certified interpreter. Dkt. No. 21. To wit, Khadaj does not assert that his language is common with a large availability of interpreters.

Prior to the filing of this habeas litigation on May 8, 2025, the Tacoma Immigration Court[3] held two hearings where a Tachelhit interpreter was not available, one hearing where Khadaj could not understand the Tachelhit interpreter, and one hearing where he could not understand a Tamazight interpreter. Return, at 8. However, the Tamazight interpreter was able to determine that Khadaj's best language was Tachelhit from the Atlas Mountains. Thus, Khadaj's assertion that the Immigration Court only made "the necessary efforts to locate interpreters" after the filing of this litigation is untrue. Obj., at 1.

Nor are the facts here equivalent to the facts in *Banda*. Obj., at 2. In *Banda*, the petitioner spoke Chichewa and required an interpreter for his removal proceedings. *Banda*, 385 F. Supp. 3d at 1109. Unlike here, the *Banda* petitioner identified his best language at his first hearing and most of the continuances were due to the unavailability of an interpreter in that language. *See id.* In contrast, many of the continuances in this case have been necessitated by

[3] Federal Respondents do not dispute that Khadaj had numerous hearings while held in Nevada before his transfer to Tacoma. It is also undisputed that the appropriate interpreter was not located during this time.

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difficulties in identifying the appropriate interpreter due to communication issues rather than the lack of interpreter availability.

Thus, these delays should not be attributed to the government.

B. The R&R correctly denied Khadaj's request that Section 1225(b) be declared unconstitutional and detention violates due process.

This Court should overrule Khadaj's objection to the R&R's recommendation to deny his request that Section 1225(b) be declared unconstitutional or violative of due process as applied here. Obj., at 2-3; R&R, at 12-13. The R&R found that "the length of Petitioner's detention has started to reach the point in which a bond hearing should be afforded if Respondents desire to continue his detention." R&R, at 13. But it also stated that "his detention up to this point is not necessarily unconstitutional." *Id.*, at 12. Thus, the R&R correctly recommends that this Court deny Khadaj's blanket request to declare Section 1225(b) unconstitutional as applied to him.

C. The R&R appropriately recommends that a bond hearing be ordered within 35 days.

This Court should overrule Khadaj's objection to the R&R's recommendation that a court-ordered bond hearing be held within 35 days. Obj., 3-4: R&R, at 11-12. Khadaj requests a 14-day order. Courts in this District often order bond hearings to be held within 30 days – not 14 days as requested by Khadaj. *See, e.g.*, *Anyanwu v. ICE Field Off. Dir.*, No. C24-0964 TSZ, 2024 WL 4626381, at *1 (W.D. Wash. Oct. 30, 2024); *Calderon v. Bostock*, No. 2:24-cv-01619-MJP-GJL, 2025 WL 879718, at *5 (W.D. Wash. Mar. 21, 2025). Furthermore, as one of the difficulties here is the availability of appropriate interpreters, the 35-day period is more reasonable for compliance.

Finally, Khadaj's objections have delayed this Court's decision on adopting the R&R by at least 14 days, even though Khadaj had substantially prevailed in the R&R. Thus, it is unclear

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why the R&R's 35-day recommendation would somehow offend due process when Khadaj's own litigation choice has prolonged his opportunity for an individualized bond hearing.

CONCLUSION

For the foregoing reasons, this Court should overrule Khadaj's objections and adopt the R&R's recommendations as written.

DATED this 25th day of August, 2025.

Respectfully submitted,

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I certify that this memorandum contains 1,122 words, in compliance with the Local Civil Rules.