UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HASSAN AMHIRRA,

Petitioner,

v.

WARDEN, Northwest Detention Center,

Respondent.

Case No.: 2:25-cv-01376-TL

PETITIONER'S RESPONSE TO MOTION TO DISMISS

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INTRODUCTION

Respondents' Motion to Dismiss (Dkt. 16) rests on the fundamental misconstruction that the INA's "mandatory detention" provision, 8 U.S.C. § 1225(b), authorizes open-ended detention without constitutional limits. *Jennings v. Rodriguez* foreclosed only a statutory reading that would imply bond hearings; it preserved the constitutional question whether prolonged civil detention violates the Fifth Amendment. 583 U.S. 281, 302–03 (2018). Courts in this District answer that question under *Banda v. McAleenan* and grant relief where detention becomes unreasonable—as here, where over a year of custody has produced no progress because the Government still cannot furnish the interpretation due process requires. 385 F. Supp. 3d at 1117–21 (W.D. Wash. 2019).

At the Rule 12 stage, the Court must accept the well pleaded facts as true and draw all reasonable inferences in Petitioner's favor. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Those facts—unchallenged in any meaningful way—show repeated, interpreter-based nonevents; a prior due process termination on the same defect; months of Government inaction; and continuing detention unmoored from any realistic, lawful path to adjudication. Because the Constitution does not permit indefinite civil confinement or sham hearings a Respondent cannot understand, the Motion to Dismiss should be denied.

ARGUMENTS

A. Mandatory Detention Under § 1225(b) Cannot Be Construed to Permit Prolonged or Indefinite Detention

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Federal Respondents rely heavily on the "mandatory detention" language of § 1225(b) to suggest that Amhirra's detention may continue indefinitely because the sole means for release is ICE's discretionary parole determination pursuant to § 1182(d)(5)(a). *See* ECF 16 at 3. Nonetheless, this ignores the constitutional limits of immigration detention. While § 1225(b) mandates detention of an arriving alien during removal proceedings and forecloses an immigration judge's discretion to release an alien on bond, it does not authorize indefinite or prolonged detention without judicial review because the INA's mandatory detention statutes cannot override the Fifth Amendment's due process protections.

The Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 830 (2018), explicitly left open whether prolonged detention under § 1225(b) is unconstitutional, noting that "[w]e do not reach…whether detention of aliens under the statute may be unconstitutional if it lasts for a prolonged period." *Id.* at 851. Respondents' reliance on *Jennings* to suggest that § 1225(b) bars relief entirely misreads the case. Far from authorizing indefinite detention, *Jennings* underscores that constitutional challenges remain available. Even if § 1225(b) is "mandatory," that principle must be construed consistently with the Constitution and statutory text cannot license indefinite civil confinement. *See Jennings*, 583 U.S. at 851 (noting that "constitutional challenges remain open"); *see also Clark v. Martinez*, 543 U.S. 371, 381 (2005) (statutes should be construed to avoid serious constitutional problems). Courts in this District agree with this reading, consistently holding that prolonged detention under § 1225(b) raises serious constitutional concerns. *See Banda v. McAleenan*, 385 F. Supp. 3d at 1117–18 (W.D. Wash. 2019) (finding 17 months of detention under § 1225(b) unconstitutional); *Castaneda Juarez v.*

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Asher, No. C13-0049, 2013 WL 3455726, at 5 (W.D. Wash. July 9, 2013) (ordering bond hearing after six months of detention).

A growing consensus in this District has rejected the idea that mandatory detention is limitless and a chorus of courts have analyzed the constitutionality of immigration detention under a framework set forth in *Banda v. McAleenan*, 385 F. Supp. 3d at 1099 (W.D. Wash. 2019). In *Banda*, the court held that detention under § 1225(b) is constitutionally permissible only when it is brief, not when it becomes prolonged and indefinite, holding that the text of § 1225(b) cannot be read to permit confinement without end. The structure and purpose of detention under § 1225(b) was designed to be short. Congress adopted this mandatory detention scheme to expedite the removal of aliens without valid entry documents and to provide a swift screening process for asylum seekers. *H.R. Conf. Rep. No. 104-828*, at 209 (1996). Moreover, Supreme Court precedent makes clear that the constitutionality of immigration detention depends on its brevity. *See Demore v. Kim*, 538 U.S. 510, 529–30 (2003) (holding mandatory detention under § 1226(c) only after emphasizing that such detention was of "limited duration," typically lasting about forty-seven days and rarely exceeding four months). The Court drew a sharp contrast between that short period and the "indefinite and potentially permanent" detention condemned in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Allowing detention to drag on for a year or more, over the course of two separate removal proceedings, without meaningful progress or the availability of an interpreter at any hearing, contradicts the very concept of expedited removal and transforms it into indefinite limbo. Mr. Amhirra's detention, now stretching beyond twelve months because the Government has not provided

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a constitutionally mandated interpretation of the removal hearings is clearly reviewable under the Fifth Amendment.

B. Application of the Banda Multi-Factor Test Confirms Amhirra's Detention Is Unconstitutional

Acknowledging the chorus of courts recognizing the due process limits on indefinite immigration detention, Federal Respondents concede that this District applies the *Banda* test. *See* ECF 16 at 3. Yet, they misapply its factors and reach the wrong conclusions. A correct application of those factors demonstrates that each one favors Mr. Amhirra. As explained below, when properly applied, the *Banda* framework compels relief in his case. *See Castaneda Juarez v. Asher*, No. C13-0049, 2013 WL 3455726, at 5 (W.D. Wash. July 9, 2013) (ordering bond hearing after six months of detention).

First, the length of detention is already excessive. Amhirra has been confined for over a year, far exceeding the "brief" period contemplated in *Demore v. Kim*, 538 U.S. 510, 529–30 (2003) (noting that detention under § 1226(c) lasted an average of 47 days and, in cases where the noncitizen appealed, an average of four months). It also doubles the six-month threshold that *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), identified as presumptively reasonable for civil immigration detention. Respondents argue that courts have found detention unreasonable only after thirteen to thirty-two months, but Amhirra has already crossed that line, and, given the repeated failure to secure a constitutionally required interpreter at every hearing in his removal proceedings despite the Government's best efforts, it is nearly certain that his detention will continue indefinitely.

Second, the end of his detention is not foreseeable, rendering its future duration entirely speculative. Every hearing thus far in Mr. Amhirra's removal proceedings has been a

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violation of his inalienable right to participate in those hearings. *See Hartooni v. INS*, 21 F.3d 336, 340 (9th Cir. 1994) (A hearing is not "full and fair" unless the proceedings are "competently translated into a language [the alien] can understand."); *see also Tejeda-Mata v. INS*, 626 F.2d 721, 726 (9th Cir. 1980). Hearings have been repeatedly reset because of the Government's inability to secure a competent Tamazight interpreter.[1] This uncertainty renders his detention functionally indefinite, precisely the kind of detention condemned by *Demore* and remedied in *Banda*, which noted that speculative timelines weigh against continued detention.

Third, the conditions of detention underscore the constitutional harm. Mr. Amhirra is confined at NWIPC, a facility that has been repeatedly cited for sanitation, medical, and staffing deficiencies. In June 2023, the Office of the Immigration Detention Ombudsman documented numerous non-compliant findings, including unsanitary conditions, medical staffing shortfalls, and failures in grievance handling which led to repetitive hunger strikes by detainees.[2] These carceral conditions are exacerbated by Amhirra's year-long isolation due to the language barrier, which prevents him from meaningfully interacting with staff or other detainees. Such prolonged isolation carries severe mental health risks and magnifies the due process violation. See *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017).

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[1] "As with the credible fear interview on October 18, 2024 and the immigration proceeding hearings on (1) November 5, 2024; (2) November 19, 2024; (3) July 16, 2025; (4) July 31, 2025; (5) August 18, 2025; (6) September 2, 2025; and (7) September 12, 2025, no qualified interpreter could be provided who could reliably communicate with Mr. Amhirra in his dialect, and Mr. Ahmirra could not participate in his removal proceedings." *See* ECF 25 at ¶ 4.

[2] *See* OIDO INSPECTION OF NORTHWEST ICE PROCESSING CENTER, available at https://www.dhs.gov/sites/default/files/2024-12/24_1120_oido_inspection-report-northwest-ice-processing-center.pdf

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Fourth, there is no evidence of delay attributable to the petitioner. Respondents concede that Mr. Amhirra has not contributed to the year-long delay of his case.

Fifth, the Government is undeniably at fault for the prolonged detention. The Government admits that they failed to timely file a second Notice to Appear causing Mr. Ahmirra to languish in detention for months while the Government made no efforts whatsoever to prosecute Mr. Ahmirra's removal or secure a qualified interpreter. Such prolonged civil confinement—while the Government neither prosecutes his case nor furnishes the basic means to do so—edges toward the very paradigm our Constitution repudiates: the authoritarian practice, seen in the world's worst regimes, of consigning individuals to indefinite detention without charge or meaningful process. Interpreter failures and the repeated resetting of hearings were also the Government's fault. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (Government must ensure adequate interpretation to preserve due process).

Sixth, Respondents claim it is too early to assess the likelihood of relief, but it is not. It is unlikely that the Government will be able to remove Mr. Ahmirra. The Government has convened seven hearings over the course of a year in two separate removal proceedings and has never been able to secure a competent interpretation of those hearings. Under such circumstances, those proceedings are unconstitutional and would not be able to lead to the removal of Mr. Ahmirra.

Taken together, *every Banda* factor weighs in Mr. Ahmirra's favor and thus his detention has crossed the constitutional line into unreasonableness.

C. Immediate Release Is the Only Effective Remedy for Unconstitutional Detention

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Respondents contend that even if habeas relief is warranted, this Court should deny immediate release. That position ignores binding constitutional principles. The Supreme Court has made clear that habeas relief must be "effective, not illusory." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). When detention has already become unconstitutional and where the purpose of the detention (the removal of the detainee from the United States) will not be obtained, a belated bond hearing is inadequate to remedy the violation. The only effective relief is immediate release.

Respondents attempt to distinguish *Zadvydas* by noting that it involved post-order detention under § 1231(a)(6). Yet the constitutional reasoning of *Zadvydas* applies equally to § 1225(b). Indefinite civil confinement without a definite endpoint or adequate justification violates due process, regardless of statutory subsection. Moreover, *Jennings* expressly left this constitutional challenge available.

The facts here confirm the indefiniteness of Mr. Amhirra's detention and that Mr. Ahmirra's removal is not foreseeable. Although the Government emphasizes that they are "working" to secure an interpreter and have scheduled hearings, repeated failures across multiple proceedings demonstrate that no progress is being made. Tamazight is a rare dialect spoken in a remote region of Morocco, and the Government has consistently failed to secure an interpreter despite numerous attempts and demonstrated no path to ensuring a dialect specific interpreter before convening a hearing. Amhirra thus remains trapped in procedural limbo, unable to participate meaningfully in his case, with no realistic prospect of resolution.

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In *Banda*, the court ordered release absent a timely bond hearing after finding detention unreasonable. Given the Government's repeated delays, missteps, and failures, immediate release is the only remedy that cures the ongoing due process violation in this case.

CONCLUSION

Respondents' Motion to Dismiss should be denied. Mr. Amhirra's more than year-long detention under § 1225(b) has become unconstitutionally prolonged, contrary to Supreme Court precedent, the INA's intent, and this District's own case law.

The Court should grant the Petition and Motion for Preliminary Injunction and order Mr. Amhirra's immediate release, or, at a minimum, require the Government to justify continued detention at a prompt bond hearing by clear and convincing evidence.

Dated: September 17, 2025

Respectfully Submitted,

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Certificate of Service

I hereby certify that on September 17, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. Service of the motion is being made upon all Respondents by operation of the Court's ECF notification system to Respondents' counsel of record.

Dated: September 17, 2025

Respectfully Submitted,

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