

The Honorable Tana Lin
The Honorable Brian A. Tsuchida

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

OMURBEK TOKTOSUNOV,

Petitioner,

v.

CAMILLA WAMSLEY, *et al.*,

Respondents.

Case No. 2:25-cv-01724-TL-BAT

FEDERAL RESPONDENTS' RETURN

I. INTRODUCTION

Petitioner Omurbek Toktosunov seeks habeas relief from his mandatory immigration detention. But U.S. Immigration and Customs Enforcement (“ICE”) is mandated to detain him for the duration of his removal proceedings, including appeals, pursuant to 8 U.S.C. § 1225(b). Toktosunov has not demonstrated that his continued detention during the appeal process without an individualized bond hearing would be unreasonable. As a result, this Court should deny his request for a court-ordered bond hearing and deny and dismiss his Petition for Writ of Habeas Corpus in its entirety. In the alternative, if the Court grants the Petition, it should order only that the Federal Respondents hold a custody hearing before an immigration judge within 30 days and reject all other requests for relief.

1 **II. BACKGROUND**

2 **A. 8 U.S.C. § 1225(b)**

3 Toktosunov is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b). Aliens who
4 are apprehended shortly after illegally crossing the border and who are determined to be
5 inadmissible due to lacking a visa or valid entry documentation, *id.* § 1182(a)(7)(A), may be
6 removed pursuant to an expedited removal order unless they express an intention to apply for
7 asylum for a fear of persecution in their home country, *id.* § 1225(b)(1)(A)(i), (iii)(II). “The
8 purpose of these provisions is to expedite the removal from the United States of aliens who
9 indisputably have no authorization to be admitted to the United States, while providing an
10 opportunity for such an alien who claims asylum to have the merits of his or her claim promptly
11 assessed by officers with full professional training in adjudicating asylum claims.” H.R. Rep. No.
12 104-828, at 209 (1996) (Conf. Rep.), 1996 WL 563320.

13 Applicants for admission fall into one of two categories. Section 1225(b)(1) covers aliens
14 initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid
15 documentation, and certain other aliens designated by the Attorney General in her discretion.
16 Separately, Section 1225(b)(2) serves as a catchall provision that applies to all applicants for
17 admission not covered by Section 1225(b)(1) (with specific exceptions not relevant here). *See*
18 *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

19 Congress has determined that all aliens subject to Section 1225(b) are subject to mandatory
20 detention. Regardless of whether an alien falls under Section 1225(b)(1) or (b)(2), the sole means
21 of release is “temporary parole from § 1225(b) detention ‘for urgent humanitarian reasons or
22 significant public benefit.’” *Jennings*, 583 U.S. at 283 (quoting 8 U.S.C. § 1182(d)(5)(A)).

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1 **B. Petitioner Omurbek Toktosunov**

2 Toktosunov is a citizen of Russia who entered the United States without inspection on or
3 about July 17, 2024. Dkt. 1 ¶ 15; Declaration of Deportation Officer Rita Soraghan (Soraghan
4 Declaration) ¶ 4; Declaration of Lyndsie R. Schmalz (Schmalz Declaration), Exhibit A (I-213,
5 Record of Deportable/Inadmissible Alien). On July 21, 2024, a Notice to Appear (NTA) was
6 issued by Border Patrol, charging Toktosunov with being removable under 8 U.S.C.
7 § 1182(a)(6)(A)(i), as an “alien present in the United States without being admitted or paroled, or
8 who arrived in the United States at any time or place other than as designated by the Attorney
9 General.” Dkt. 1 ¶ 22; Soraghan Declaration ¶ 5; Schmalz Declaration, Exhibit B (Notice to
10 Appear). After his initial detention, Toktosunov was transferred to the Northwest ICE Processing
11 Center, where he is currently detained. See Soraghan Declaration ¶ 3.

12 On September 10, 2024, Toktosunov filed a motion in the Tacoma Immigration Court
13 requesting a redetermination of the conditions of his detention or release pending a decision on his
14 removability. Soraghan Declaration ¶ 6. He then withdrew the motion, and an immigration judge
15 ordered no action. *Id.*; Schmalz Declaration, Exhibit 3 (Sept. 19, 2024 Order). Toktosunov filed
16 a new motion for release on November 13, 2024, which was denied for lack of jurisdiction after
17 the immigration judge found that Toktosunov was subject to mandatory detention under 8 U.S.C.
18 § 1225(b)(1) & (2)(a). Schmalz Declaration, Exhibit 4 (Nov. 21, 2024 Order).

19 On December 13, 2024, Toktosunov filed an application for asylum and for withholding
20 for removal. Soraghan Declaration ¶ 9. An immigration judge heard the merits of Toktosunov’s
21 application on May 29, 2025. *Id.* In a written decision issued on July 22, 2025, the immigration
22 judge found that Toktosunov was removable but granted his application for asylum as a matter of
23 discretion. *Id.* ¶ 10; Dkt. 2 (Declaration of Sydney Maltese), Exhibit A, p. 8.

1 The Department of Homeland Security (DHS) appealed the immigration judge’s decision
2 to the Board of Immigration Appeals (BIA), which was received on August 1, 2025. Schmalz
3 Declaration, Exhibits 5 (Notice of Appeal) & 6 (Receipt). Shortly thereafter, the Tacoma
4 Immigration Court sent the record of proceeding to the BIA for review and provided the BIA with
5 notice that Toktosunov remains detained pending adjudication of the appeal. *Id.* at Exhibit 8
6 (Notice of Record).

7 **III. ARGUMENT**

8 **A. Toktosunov’s continued detention without a court-ordered bond hearing is**
9 **constitutional.**

10 Toktosunov has not shown that he is in immigration custody in violation of the
11 Constitution, law, or treaties of the United States. 28 U.S.C. § 2241. ICE lawfully detains him
12 pursuant to 8 U.S.C. § 1225(b), which mandates detention of arriving aliens seeking admission to
13 the United States. Individuals detained under Section 1225(b), including Toktosunov, are not
14 entitled to an individualized bond hearing simply due to the passage of time. And because DHS
15 has appealed the immigration judge’s grant of asylum, the decision has been stayed and may not
16 be executed while the appeal is pending with the BIA. 8 C.F.R. § 1003.6(a) (“[T]he decision in
17 any proceeding under this chapter from which an appeal to the Board may be taken shall not be
18 executed . . . while an appeal is pending . . .”).

18 The Supreme Court has considered whether 8 U.S.C. § 1225(b) imposes a time-limit on
19 the length of detention and whether such aliens detained under this statutory authority have a
20 statutory right to a bond hearing. *See Jennings*, 583 U.S. at 297–303. The Court rejected both
21 arguments, holding that Section 1225(b) mandates detention during the pendency of removal
22 proceedings and provides no entitlement to a bond hearing. *See id.* at 303 (“Nothing in the
23 statutory text imposes any limit on the length of detention.”). The Court further clarified that
24 Section 1225(b) detainees may be released only through discretionary parole under 8 U.S.C.

1 § 1182(d)(5). *Id.* at 300. While *Jennings* forecloses any statutory or categorical constitutional
2 right to a bond hearing under Section 1225(b), it did not reach the issue of whether prolonged
3 detention without such a hearing could, in individual cases, raise a due process concern.

4 Toktosunov's continued detention without a court-ordered bond hearing does not violate
5 his Fifth Amendment due process rights. Courts in this District analyze this issue using a multi-
6 factor test. *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1117–18 (W.D. Wash. 2019). In
7 *Banda*, the district court found that the petitioner's 17-month immigration detention pursuant to
8 8 U.S.C. § 1225(b) had become unreasonable. *Id.* at 1117–21. To conduct this analysis, the court
9 analyzed six factors: (1) length of detention; (2) how long detention is likely to continue absent
10 judicial intervention; (3) conditions of detention; (4) the nature and extent of any delays in the
11 removal caused by the petitioner; (5) the nature and extent of any delays caused by the government;
12 and (6) the likelihood that the final proceedings will culminate in a final order of removal. *See id.*
13 Analysis of these factors demonstrates that Toktosunov's detention, while prolonged, has not
14 become unreasonable.

15 The first *Banda* factor looks at the length of the petitioner's immigration detention.
16 Toktosunov has been detained since July 2024, a total of 14 months. Federal Respondents
17 acknowledge that this factor likely favors Toktosunov, though is not yet as long as the detention
18 found to be unreasonable in the *Banda* case itself. 385 F. Supp. 3d at 1118 (17 months).

19 The second *Banda* factor assesses the length of future detention. As of the filing of this
20 Response, DHS's appeal has been pending before the BIA for more than a month. The notice of
21 appeal was promptly filed, and the record of the proceeding was sent to the BIA in early August
22 2025, reducing the risk that the appeal would be delayed by any failure to provide the BIA with
23 information necessary to adjudicate the appeal. While Toktosunov alleges in his petition that the
24 appeal "is likely to take at least six additional months to complete," he offers no support for that
predicted timeline beyond a recent report showing an increase in pending appeals over the last

1 7 years. Any assessment of likely length of Toktosunov's future detention would thereby be
2 speculative at best.

3 As for the third *Banda* factor – conditions of detention – Toktosunov is detained at the
4 NWIPC. Toktosunov has filed a declaration describing conditions at NWIPC, which he alleges
5 include limited time outside, lack of programming, poor quality food, and a lack of access to
6 orthopedic shoes. Dkt. 3 ¶¶ 4–8. This third factor likely favors the petitioner.

7 The fourth *Banda* factor assesses delays caused by the petitioner. This factor should be
8 neutral here. As the *Banda* Court noted, “Courts should be sensitive to the possibility that dilatory
9 tactics by the removable alien may serve not only to put off the final day of deportation, but also
10 to compel a determination that the alien must be released because of the length of his
11 incarceration.” *Banda*, 385 F. Supp. 3d at 1119. There is no evidence that Toktosunov has
12 intentionally caused any delay, though he did not file an application for asylum until five months
13 after he was initially detained.

14 The fifth *Banda* factor, delay in the removal proceedings caused by the government, should
15 favor Federal Respondents. Toktosunov's application for asylum was adjudicated several months
16 after it was filed, and DHS promptly filed a notice of appeal. This is not a case where the petitioner
17 has languished due to the inactivity of the government, and this factor should thereby not weigh
18 against Federal Respondents.

19 The last *Banda* factor weighs the likelihood that removal proceedings will result in a final
20 order of removal. While an immigration judge has granted Toktosunov's application for asylum,
21 DHS has appealed the decision on specific, non-frivolous grounds. There is no way to accurately
22 and definitively assess the likelihood that the BIA affirms the immigration judge's grant of asylum,
23 and this factor should not weigh in favor of either party.

1 In total, because the *Banda* factors are either speculative or balance each other out,
2 Toktosunov has not demonstrated that his continued detention without a court-ordered bond
3 hearing violates due process.

4 **B. Even if a writ is issued, this Court should not grant all relief sought in the Petition.**

5 Even if Toktosunov were to prevail, the Petition seeks relief that is unwarranted and outside
6 of the scope of this habeas proceeding. First, Federal Respondents request that the Court order
7 that any hearing conducted before an immigration judge be held within 30 days, as opposed to the
8 14 days requested by Toktosunov. Dkt. 1, p. 17 ¶ b.

9 Second, Toktosunov asks this Court to require that the immigration judge consider
10 alternatives to detention at a court-ordered bond hearing. Dkt. 1, p. 17 ¶ b. This request is
11 overbroad, because an alternative to detention analysis should not be required if an immigration
12 judge finds Toktosunov to be a danger to the community. *See Martinez v. Clark*, 36 F.4th 1219,
13 1231 (9th Cir. 2022), *cert. granted, judgment vacated*, 144 S. Ct. 1339 (2024) (“Due process does
14 not require immigration courts to consider conditional release when determining whether to
15 continue to detain an alien under § 1226(c) as a danger to the community.”).

16 Third, Toktosunov asks that this Court order the immigration judge to order his release on
17 supervision if immigration officials do not demonstrate that he is a risk of flight or danger. Dkt. 1
18 ¶ b. But such a remedy is outside of the scope of the present habeas petition and would require
19 the Court to provide relief on a harm that is entirely speculative. No hearing has happened yet,
20 and Toktosunov provides no reason for this Court to preemptively order an immigration judge to
21 conduct that hearing in accordance with the law, on the off chance that the immigration judge does
22 not. To the extent that this situation arises at a later date, the appropriate means by which to
23 challenge an erroneous decision would be through a new habeas petition.

1 Finally, in the alternative to an immigration presiding over the requested bond hearings,
2 Toktosunov suggests that this Court hold the bond hearing. Dkt. 1, p. 17 ¶ c. But if this Court
3 does find that Toktosunov is entitled to a bond hearing before a neutral decisionmaker, the bond
4 hearing should be conducted by an immigration judge. While this court may have the authority to
5 conduct bond hearings, this Court should decline to do so as “courts in this Circuit have regularly
6 found that the IJ is the proper authority to conduct bond hearings and determine a detainee’s risk
7 of flight or dangerousness to the community.” *Doe v. Becerra*, 697 F. Supp. 3d 937, 948 (N.D.
8 Cal. 2023), *appeal dismissed*, No. 24-332, 2025 WL 252476 (9th Cir. Jan. 15, 2025).

9 **III. CONCLUSION**

10 This Court should find that Toktosunov’s continued detention without a court-ordered
11 bond hearing does not violate Due Process. Toktosunov is lawfully detained pursuant to 8 U.S.C.
12 § 1225(b) and his detention, while prolonged, has not become unreasonable. Thus, this Court
13 should deny Toktosunov’s request for a writ of habeas corpus and deny and dismiss the Petition
14 in its entirety.

15 In the alternative, if the Court grants the Petition, it should order only that Respondents
16 hold a custody hearing for Petitioner before an immigration judge within 30 days and decline to
17 grant the other relief requested in the Petition.

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1 DATED this 19th day of September, 2025.

2 Respectfully submitted,

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15 *Attorneys for Federal Respondents*

16 I certify that this memorandum contains 2,300
17 words, in compliance with the Local Civil Rules.
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