

District Judge Richard A. Jones  
Magistrate Judge S. Kate Vaughan

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

KENDY DUVINE,

Petitioner,

v.

LAURA HERMOSILLO, *et al.*,

Respondents.

Case No. 2:25-cv-02583-RAJ-SKV

FEDERAL RESPONDENTS'<sup>1</sup> RETURN

Noted for Consideration:  
January 5, 2026

**I. INTRODUCTION**

Petitioner Kendy Duvine has failed to demonstrate that his mandatory immigration detention pursuant to 8 U.S.C. § 1225(b) has become unconstitutionally prolonged. U.S. Immigration and Customs Enforcement (“ICE”) has lawfully detained Petitioner for approximately seven months pursuant to Section 235(b) of the Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1225(b). Petitioner is an arriving alien who is in removal proceedings.

<sup>1</sup> Respondent Bruce Scott is not a Federal Respondent and is not represented by undersigned counsel.

1 Petitioner seeks a court-ordered individualized bond hearing where the government must  
2 justify his continued detention by clear and convincing evidence “and that no alternative to  
3 detention can mitigate any risk that his release would present.” Pet., Prayer for Relief. This Court  
4 should deny the Petition. The Supreme Court has considered whether 8 U.S.C. § 1225(b) imposes  
5 a time-limit on the length of detention and whether such noncitizens detained under this statutory  
6 authority have a statutory right to a bond hearing. *See Jennings v. Rodriguez*, 583 U.S. 281, 297-  
7 303 (2018). The Supreme Court held that “nothing in the statutory text [of 8 U.S.C. § 1225(b)]  
8 imposes any limit on the length of detention” nor “says anything whatsoever about bond hearings.”  
9 *Id.*, at 297. The Supreme Court’s decision in *Thuraissigiam* reinforced this holding. *Dep’t of*  
10 *Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020). Therein, the Supreme Court “reiterated  
11 th[e] important rule” that a noncitizen seeking initial entry to the United States “has no entitlement”  
12 to any legal rights, constitutional or otherwise, other than those expressly provided by statute. *See*  
13 591 U.S. at 107, 138-39; *see also id.*, at 107 (“Congress is entitled to set the conditions for an  
14 alien’s lawful entry into this country and that, as a result, an alien at the threshold of initial entry  
15 cannot claim any greater rights under the Due Process Clause.”). With this legal backdrop,  
16 Petitioner cannot demonstrate that his seven-month detention has become unconstitutionally  
17 prolonged.

18 Accordingly, Federal Respondents respectfully request that the Court deny Petitioner’s  
19 Petition.

## 20 II. BACKGROUND

### 21 A. Detention Under 8 U.S.C. § 1225

22 Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the  
23 Executive could “expedite removal of aliens lacking a legal basis to remain in the United States.”  
24 *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep’t of Homeland Sec. v. Thuraissigiam*,

1 591 U.S. 103, 106 (2020) (“[Congress] crafted a system for weeding out patently meritless claims  
 2 and expeditiously removing the aliens making such claims from the country.”). Section 1225  
 3 applies to “applicants for admission” to the United States, who are defined as “alien[s] present in  
 4 the United States who [have] not been admitted” or noncitizens “who arrive[ ] in the United  
 5 States,” whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Applicants for  
 6 admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by  
 7 § 1225(b)(2),” both of which are subject to mandatory detention. *Jennings v. Rodriguez*, 583 U.S.  
 8 281, 287 (2018) (“[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for  
 9 applicants for admission until certain proceedings have concluded.”).

10 Section 1225(b)(1) applies to “arriving aliens” and “certain other” noncitizens “initially  
 11 determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.”  
 12 *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Section 1225(b)(1) allows for the expedited removal of  
 13 any noncitizen “described in” Section 1225(b)(1)(A)(iii)(II), as designated by the Attorney  
 14 General or Secretary of Homeland Security – that is, any noncitizen not “admitted or paroled into  
 15 the United States” and “physically present” fewer than two years – who is inadmissible under  
 16 Section 1182(a)(7) at the time of “inspection.” *See* 8 U.S.C. § 1182(a)(7) (categorizing as  
 17 inadmissible noncitizens without valid entry documents). Whether that happens at a port of entry  
 18 or after illegal entry is not relevant; what matters is whether, when an officer inspects a noncitizen  
 19 for admission under Section 1225(a)(3), that noncitizen lacks entry documents and so is subject to  
 20 Section 1182(a)(7).

21 Expedited removal proceedings under Section 1225(b)(1) include additional procedures if  
 22 a noncitizen indicates an intention to apply for asylum<sup>2</sup> or expresses a fear of persecution, torture,

23 \_\_\_\_\_  
 24 <sup>2</sup> Noncitizens must apply for asylum within one year of arriving in the United States, 8 U.S.C. § 1558(a)(2)(B), except  
 if the noncitizen can demonstrate “extraordinary circumstances” that justify moving that deadline. *Id.*  
 § 1558(a)(2)(D).

1 or return to the noncitizen's country. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). If  
2 the asylum officer or immigration judge does not find a credible fear, the noncitizen is "removed  
3 from the United States without further hearing or review." 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I),  
4 (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2); 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum  
5 officer or immigration judge finds a credible fear, the noncitizen is generally placed in full removal  
6 proceedings under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8 C.F.R. §  
7 208.30(f); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

8 Expedited removal under § 1225(b)(1) is a distinct statutory procedure from removal under  
9 Section 1229a. Section 1229(a) governs full removal proceedings initiated by a notice to appear  
10 and conducted before an immigration judge, during which the noncitizen may apply for relief or  
11 protection. By contrast, expedited removal under Section 1225(b)(1) applies in narrower,  
12 statutorily defined circumstances – typically to individuals apprehended at or near the border who  
13 lack valid entry documents or commit fraud upon entry – and allows for their removal without a  
14 hearing before an immigration judge, subject to limited exceptions. For these noncitizens, DHS  
15 has discretion to pursue expedited removal under Section 1225(b)(1) or Section 1229a. *Matter of*  
16 *E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011).

17 **B. Petitioner Kendy Duvine**

18 Petitioner is a native and citizen of Haiti who, on or about November 21, 2022, entered the  
19 United States without inspection or parole near Key West, Florida, and was apprehended shortly  
20 thereafter. Correa Decl., ¶¶ 3-4; Lambert Decl., Ex. A, Form I-213. He was processed as an  
21 arriving alien subject to expedited removal proceedings. Correa Decl., ¶ 4; Lambert Decl., Ex. B,  
22 Notice; *see also* 8 U.S.C. § 1225(b)(1)(A)(i) (requiring an immigration officer to "order the alien  
23 removed from the United States without further hearing or review" after determining that the  
24 noncitizen is inadmissible pursuant to 8 U.S.C. § 1182(a)(7)). However, DHS released Petitioner

1 on his own recognizance pending a credible fear interview by U.S. Citizenship and Immigration  
2 Services (“USCIS”). Correa Decl., ¶ 5.

3 In May 2023, Petitioner filed an asylum application with USCIS. Correa Decl., ¶ 6. On  
4 June 5, 2025, USCIS dismissed Petitioner’s application. Lambert Decl., Ex. E, Notice of Dismissal  
5 of Form I-589.

6 In February 2025, Petitioner was arrested in Florida for leaving the scene of a car accident.  
7 Dkt. No. 3, Duvine Decl., ¶ 5. On February 15, 2025, ICE encountered Petitioner at the Turner  
8 Guilford Knight Correctional Center and issued an immigration detainer hold to take custody of  
9 him upon his release. Correa Decl., ¶ 7. On May 29, 2025, ICE took custody of Petitioner when  
10 he was released from the correctional center. Correa Decl., ¶ 8; Duvine Decl., ¶ 1; Lambert Decl.,  
11 Ex. B, Warrant for Arrest; Ex. C, Form I-213; Ex. D, Notice of Custody Determination. He was  
12 initially detained at the Krome North Service Processing Center but was transferred to the  
13 Northwest ICE Processing Center on June 18, 2025. Correa Decl., ¶¶ 8, 10.

14 ICE detained Petitioner pending his credible fear interview with USCIS. Correa Decl., ¶ 8;  
15 Lambert Decl., Ex. C, at L19. ICE contacted USCIS about the credible hearing multiple times  
16 after detaining Petitioner. Correa Decl., ¶¶ 9, 11, 12. In August, USCIS requested additional  
17 documents from ICE related to Petitioner’s case. *Id.*, ¶ 13. ICE provided these documents to  
18 USCIS in October. *Id.*, ¶ 14.

19 On December 17, 2025, DHS placed Petitioner in full removal proceedings in lieu of  
20 expedited removal. Correa Decl., ¶ 15. DHS issued Petitioner a notice to appear charging him as  
21 an arriving alien who is removable under 8 U.S.C. § 1182(a)(7)(A)(i)(I). Lambert Decl., Ex. F,  
22 Notice to Appear. The immigration court scheduled Petitioner’s initial master calendar hearing  
23 for January 8, 2026. Correa Decl., ¶ 16.

1 **III. LEGAL STANDARD**

2 It is axiomatic that “[t]he district courts of the United States . . . are courts of limited  
3 jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon Mobil*  
4 *Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he  
5 scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present  
6 day.” *Thuraissigiam*, 591 U.S. at 125 n. 20. Title 28 U.S.C. § 2241 provides district courts with  
7 jurisdiction to hear federal habeas petitions.

8 To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her  
9 custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. §  
10 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

11 **IV. ARGUMENT**

12 **A. ICE’s continued detention of Petitioner is mandated by statute.**

13 Petitioner’s detention is statutorily mandated pursuant to 8 U.S.C. § 1225(b)(1) as he is an  
14 arriving alien. *Lambert Decl.*, Ex. F; 8 C.F.R. § 1.2 (definition of “arriving alien”).

15 Congress has determined that all noncitizens subject to Section 1225(b) must be detained.  
16 The relevant statutory provision states that in the case of an arriving alien seeking asylum, “[i]f  
17 the officer determines at the time of the interview that an alien has a credible fear or persecution .  
18 . . the alien shall be detained for further consideration of the application for asylum.” 8 U.S.C.  
19 § 1225(b)(1)(B)(ii). “Any alien subject to the procedures under this clause shall be detained  
20 pending a final determination of credible fear of persecution and, if found not to have such a fear,  
21 until removed.” 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); *see also* 62 Fed. Reg. 10,312, 10,315 (Mar. 6,  
22 1997) (“[t]he provisions of § 235.3(b)(2)(iii) require[e] detention of all aliens subject to the  
23 expedited removal provisions and issued a removal order”); *Matter of M-S-*, 27 I. & N. Dec. 509,  
24 509 (A.G. 2019) (“Generally, aliens placed in expedited proceedings must be detained until

1 removed. INA § 235(b)(1)(B)(iii)(IV).”). Regardless of whether a noncitizen falls under Section  
2 1225(b)(1) or (b)(2), the sole means of release is “temporary parole from § 1225(b) detention ‘for  
3 urgent humanitarian reasons or significant public benefit,’ § 1182(d)(5)(A).” *See Jennings v.*  
4 *Rodriguez*, 583 U.S. 281, 283 (2018).

5 Petitioner asks this Court to order an individualized bond hearing. Pet., Prayer for Relief.  
6 But the statutory authority which Petitioner is detained under does not provide for the relief  
7 requested in the Petition. *See Jennings*, 583 U.S. at 297-303. As the detention authority does not  
8 afford Petitioner a right to release or any of the relief requested, the Court should thereby reject  
9 his habeas claim.

10 **B. Petitioner’s continued detention without a court-ordered bond hearing is**  
11 **constitutional.**

12 This Court should deny the Petition because Petitioner has not shown that he is in ICE  
13 custody in violation of the Constitution, law, or treaties of the United States. 28 U.S.C. § 2241.  
14 Petitioner is detained under 8 U.S.C. § 1225(b), which mandates detention of arriving aliens. *See*  
15 *Jennings v. Rodriguez*, 138 S. Ct. 830, 842 (2018). The Supreme Court in *Jennings* rejected the  
16 Ninth Circuit’s rule that mandatory detention becomes unconstitutional after a presumptive six-  
17 month period. Accordingly, individuals detained under Section 1225(b) are not entitled to an  
18 individualized bond hearing simply due to the passage of time. Instead, courts assess whether the  
19 detention has become unreasonably prolonged under due process balancing factors. *See Banda v.*  
20 *McAleenan*, 385 F. Supp. 3d 1099, 1117-118 (W.D. Wash. 2019). Petitioner here claims that his  
21 continued detention without a court-ordered bond hearing violates due process. Pet., ¶¶ 62-66.  
22 This claim lacks merit.

23 The Supreme Court has considered whether 8 U.S.C. § 1225(b) imposes a time-limit on  
24 the length of detention and whether such aliens detained under this statutory authority have a

1 statutory right to a bond hearing. *See Jennings*, 583 U.S. at 297-303. The Court rejected both  
2 arguments, holding that Section 1225(b) mandates detention during the pendency of removal  
3 proceedings and provides no entitlement to a bond hearing. *See id.*, at 303 (“Nothing in the  
4 statutory text imposes any limit on the length of detention.”). While *Jennings* forecloses any  
5 statutory or categorical constitutional right to a bond hearing under Section 1225(b), it did not  
6 reach the issue of whether prolonged detention without such a hearing could, in individual cases,  
7 raise a due process concern.

8 ICE took custody of Petitioner approximately seven months ago. Petitioner’s continued  
9 detention without a court-ordered bond hearing does not violate his Fifth Amendment due process  
10 rights. Courts in this District analyze this issue using a multi-factor test. *See Banda v. McAleenan*,  
11 385 F. Supp. 3d 1099, 1117-118 (W.D. Wash. 2019). In *Banda*, the district court found that the  
12 petitioner’s 17-month immigration detention pursuant to 8 U.S.C. § 1225(b) had become  
13 unreasonable. *Id.*, at 1117-121. To conduct this analysis, the court analyzed six factors: (1) length  
14 of detention; (2) how long detention is likely to continue absent judicial intervention; (3)  
15 conditions of detention; (4) the nature and extent of any delays in the removal caused by the  
16 petitioner; (5) the nature and extent of any delays caused by the government; and (6) the likelihood  
17 that the final proceedings will culminate in a final order of removal. *See id.* Analysis of these  
18 factors demonstrates that Petitioner’s detention, while prolonged, has not become unreasonable.

19 The first *Banda* factor looks at the length of the petitioner’s immigration detention.  
20 Petitioner has been detained since May 29, 2025. While Federal Respondents acknowledge that  
21 Petitioner has recently been detained slightly longer than six months, this Court should note that  
22 the current length of his detention has not reached the length of what many courts have found to  
23 be unreasonable. *See Hong v. Mayorkas*, No. 2:20-cv-1784, 2021 WL 8016749, at \*5 (W.D. Wash.  
24 June 8, 2021), *report and recommendation adopted*, 2022 WL 1078627 (W.D. Wash. Apr. 11,

1 2022) (collecting cases finding prolonged detention from 13 months to 32 months without a court-  
2 ordered bond hearing to have become unreasonable); *see also* Pet., ¶ 43 (listing cases involving  
3 longer periods of detention). Therefore, this factor favors Federal Respondents.

4 The second *Banda* factor assesses the length of future detention. While Petitioner asserts  
5 that his detention may last a year or longer (Pet., ¶ 42), any assessment of the length of his future  
6 detention would be speculative at best because his proceedings are still in the early stages before  
7 an IJ. Thus, this factor should be neutral. *Maliwat v. Scott*, No. 2:25-cv-00788-TMC, 2025 WL  
8 2256711, at \*5 (W.D. Wash. Aug. 7, 2025) (listing cases) (“Given that [the petitioner’s] case is  
9 still before the IJ, and no appeal has been filed, the Court declines to speculate as to the likelihood  
10 of future detention.”).

11 It is unknown whether Petitioner’s removal proceedings will ultimately end in his release  
12 or further proceedings before the BIA or the Ninth Circuit. His next appearance before the IJ is  
13 scheduled for January 8, 2026.

14 As for the third *Banda* factor – conditions of detention, Petitioner is detained at the NWIPC.  
15 The fourth and fifth *Banda* factors assess delays caused by the petitioner and the government.  
16 These factors should be neutral. There is no evidence that Petitioner has caused any delay.  
17 Petitioner incorrectly asserts that the government has caused significant delay. Pet., ¶ 45. ICE  
18 detained Petitioner pending his credible fear interview with USCIS, and ICE kept in contact with  
19 USCIS concerning the interview. Rather than continue to wait for a credible fear interview, DHS  
20 issued a notice to appear placing Petitioner into full removal proceedings – for which USCIS does  
21 not need to conduct a credible fear interview. The record reflects that ICE repeatedly followed up  
22 with USCIS and ultimately exercised its statutory discretion to place Petitioner into Section 1229a  
23 proceedings rather than prolong expedited removal processing.

1 The last *Banda* factor weighs the likelihood that removal proceedings will result in a final  
2 order of removal. This factor is speculative and should be neutral.

3 In total, Petitioner has not demonstrated that his continued detention without a court-  
4 ordered bond hearing violates due process

5 **C. Even if a writ were to be issued, this Court should not grant all relief sought in the**  
6 **Petition.**

7 The Petition seeks unwarranted relief even if Petitioner were to prevail. Even where a due  
8 process violation is found, habeas relief must be narrowly tailored to remedy the specific  
9 constitutional harm. First, Petitioner ask this Court to require the government to establish by clear  
10 and convincing evidence “that no alternative to detention can mitigate any risk that his release  
11 would present.” Prayer for Relief, ¶ b. Petitioner provides no legal support that due process  
12 requires such justification for a noncitizen subject to prolonged mandatory detention. But even  
13 for criminal alien detainees subjected to prolonged mandatory detention, the Ninth Circuit did not  
14 extend the procedural protections in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), which is  
15 considered “the high-water mark of procedural protections required by due process,” to include a  
16 consideration of alternatives to detention for those found to be a danger to their community.  
17 *Martinez v. Clark*, 124 F.4th 775, 786 (9th Cir. 2024). Petitioner already seeks a heightened  
18 burden to be placed on the government’s justification for his continued detention. This Court  
19 should not require additional procedural protections here.

20 Second, in the alternative to an immigration judge presiding over the requested bond  
21 hearings, Petitioner suggests that this Court hold the bond hearing. Pet., Prayer for Relief, ¶ c. If  
22 this Court does find that Petitioner is entitled to a court-ordered bond hearing, the bond hearing  
23 should be conducted by an immigration court. While this court may have the authority to conduct  
24 bond hearings, this Court should decline to do so as “courts in this Circuit have regularly found

1 that the IJ is the proper authority to conduct bond hearings and determine a detainee’s risk of flight  
2 or dangerousness to the community.” *Doe v. Becerra*, 697 F. Supp. 3d 937, 948 (N.D. Cal. 2023),  
3 *appeal dismissed*, No. 24-332, 2025 WL 252476 (9th Cir. Jan. 15, 2025). Granting the relief  
4 requested would exceed what due process requires and improperly intrude on the statutory  
5 detention scheme enacted by Congress.

6 **V. CONCLUSION**

7 For the foregoing reasons, this Court should deny the Petition.

8 DATED this 31st day of December, 2025.

9 Respectfully submitted,

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18 *I certify that this memorandum contains 3,025*  
19 *words, in compliance with the Local Civil Rules.*