

Chief District Judge David G. Estudillo

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

CARLOS ESQUIVEL-MENDOZA,

Petitioner,

v.

BRUCE SCOTT, *et al.*,¹

Respondents.

Case No. 2:25-cv-02745-DGE

FEDERAL RESPONDENTS'²
RETURN MEMORANDUM

Noted for Consideration:
March 2, 2026.

I. INTRODUCTION

This Court should deny Petitioner Carlos Esquivel-Mendoza's Petition for Writ of Habeas Corpus. Dkt. 12 ("Pet."). Petitioner challenges his immigration detention at the Northwest ICE Processing Center ("NWIPC"), arguing that his continued custody is unlawful and unconstitutional while he awaits removal from the United States.

Petitioner principally relies on *Zadvydas v. Davis*, 533 U.S. 678 (2001), suggesting that his detention is governed by 8 U.S.C. § 1231 and has become impermissibly prolonged under that

¹ Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting Seattle Field Office Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement Laura Hermosillo for Camilla Wamsley.

² Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 framework. That premise is incorrect. Although the Ninth Circuit denied his petition for review
2 on February 13, 2026, the mandate has not yet issued. Because judicial review remains pending,
3 Petitioner's removal order is not administratively final within the meaning of 8 U.S.C. §
4 1231(a)(1)(B)(ii). Accordingly, his detention is governed by 8 U.S.C. § 1225(b), not § 1231, and
5 the post-removal-period analysis articulated in *Zadvydas* does not apply. Courts in this District
6 evaluate prolonged detention claims under § 1225(b) using the multi-factor test set forth in *Banda*
7 *v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019).

8 Petitioner also contends that his August 2025 re-detention violated due process under the
9 balancing framework established in *Mathews v. Eldridge*, 424 U.S. 319 (1976). But at the time of
10 re-detention, DHS correctly and reasonably determined that Petitioner was subject to a final order
11 of removal and lawfully detained him to effectuate removal. The subsequent issuance of a
12 temporary stay does not retroactively invalidate ICE's lawful authority at the time of arrest.
13 Moreover, the administrative and appellate history of this case materially distinguishes it from
14 decisions addressing pre-deprivation process concerns, including *E.A.T.-B. v. Wamsley*, 795 F.
15 Supp. 3d 1316 (W.D. Wash. 2025).

16 Because Petitioner is lawfully detained under 8 U.S.C. § 1225(b), because his continued
17 detention does not violate due process under governing precedent, and because his re-detention
18 complied with constitutional requirements, the Petition should be denied.

19 II. FACTUAL BACKGROUND

20 Petitioner Carlos Esquivel-Mendoza is a native and citizen of Mexico. Declaration of
21 Adrian Leyba ("Leyba Decl.") ¶ 4. On or about June 21, 1996, Petitioner was convicted of
22 possession of cocaine with intent to distribute and sentenced to six month in prison. *Id.* ¶ 5. On
23 March 9, 1998, Petitioner was ordered removed from the United States by an Immigration Judge.
24 *Id.* ¶ 6; Declaration of Alixandria K. Morris ("Morris Decl."), Exs. 1-2. Petitioner was removed

1 on March 10, 1998. Leyba Decl. ¶ 6.

2 On or about October 22, 1999, Petitioner was convicted of distribution of cocaine and
3 sentenced to thirty months in prison. *Id.* ¶ 7.

4 On July 25, 2014, Petitioner applied for admission into the United States from Mexico
5 through the San Ysidro, California Port of Entry. *Id.* ¶ 8; Morris Decl., Exs. 3-4. Petitioner was
6 interviewed by U.S. Customs and Border Protection (CBP) officials. Leyba Decl. ¶ 9. Petitioner
7 admitted that he had previously been convicted for distribution of cocaine, and further admitted
8 that he had previously been removed from the United States. *Id.* Petitioner was taken into DHS
9 custody pending a credible fear interview with U.S. Citizenship and Immigration Services
10 (“USCIS”). *Id.* ¶ 10.

11 On July 28, 2014, Petitioner was turned over to ICE custody. *Id.* ¶ 11. On August 07,
12 2014, a credible fear interview was completed. *Id.* ¶ 12. On August 13, 2014, USCIS determined
13 that Petitioner returned a positive credible fear finding, and Petitioner’s case was referred to the
14 Immigration Court for withholding proceedings. *Id.* ¶ 13. On February 12, 2015, an Immigration
15 Judge (“IJ”) granted Petitioner’s release on bond in the amount of \$7,500. *Id.* ¶ 14.

16 On February 14, 2015, Petitioner bonded out of DHS/ICE custody. *Id.* ¶ 15. On June 21,
17 2016, Petitioner’s bond was cancelled after ERO discovered Petitioner had warrants for his arrest
18 in Mexico. *Id.* ¶ 16. On June 24, 2016, Petitioner was arrested by ICE and booked into the
19 NWIPC. *Id.* ¶ 17. On February 16, 2017, Petitioner’s request for bond was denied. *Id.* ¶ 18.

20 On July 21, 2017, the IJ found that Petitioner’s convictions for distribution of cocaine with
21 intent to distribute is an Aggravated Felony as defined in the INA. *Id.* ¶ 19. The IJ further denied
22 all relief and ordered Petitioner removed to Mexico. *Id.* Petitioner timely filed an appeal with the
23 Board of Immigration Appeals (“BIA”). *Id.* On or about August 4, 2017, DHS filed a motion with
24 the BIA requesting a limited remand for purposes of a competency determination. *Id.* ¶ 20. On

1 February 8, 2018, the IJ granted Petitioner release on bond in the amount of \$7,500 plus ATD
2 conditions at ICE's discretion. *Id.* ¶ 21.

3 On February 9, 2018, Petitioner bonded out of DHS/ ICE custody. *Id.* ¶ 22. On February
4 20, 2018, the BIA remanded Petitioner's case to the IJ for the limited purpose of addressing
5 Petitioner's competency. *Id.* ¶ 23. On March 28, 2018, the Immigration Judge found that
6 Petitioner was competent at the time of his 2017 merits hearing, but that respondent presently
7 lacked competency. *Id.* ¶ 24; Morris Decl., Ex. 5. The IJ further found that additional safeguards
8 were unnecessary as Petitioner had legal counsel. Leyba Decl. ¶ 24; Morris Decl., Ex. 4. The IJ
9 also vacated the prior adverse credibility finding. Leyba Decl. ¶ 24; Morris Decl., Ex. 4.

10 On November 19, 2020, the BIA dismissed Petitioner's appeal. Leyba Decl. ¶ 25. On
11 December 3, 2020, Petitioner filed a petition for review ("PFR") with the Ninth Circuit Court of
12 Appeals. *Id.* ¶ 26. On April 15, 2025, the Ninth Circuit dismissed the PFR. *Id.* ¶ 27. In June 2025,
13 the Ninth Circuit Court of Appeals re-instated the PFR. *Id.* ¶ 28. At no time was a stay of removal
14 issued prohibiting Petitioner's removal. *Id.* ¶ 29. On August 13, 2025, ICE detained Petitioner in
15 Wenatchee, Washington for purposes of executing the order by removing Petitioner from the
16 United States, believing he was now subject to a final order of removal since the Ninth Circuit
17 dismissed the PFR and no stay of removal was issued. *Id.* ¶ 30.

18 On August 13, 2025, Petitioner was transferred to the NWIPC. *Id.* ¶ 31. On August 13,
19 2025, Petitioner filed a motion to stay removal with the Ninth Circuit. *Id.* ¶ 32. Pursuant to
20 General Order 6.4(c), a stay of Petitioner's removal went into effect. *Id.* On February 13, 2026,
21 the Ninth Circuit denied Petitioner's PFR. *Id.* ¶ 33. The temporary stay remains in effect until the
22 mandate issues. *Id.* Once the mandate issues, ICE intends to remove Petitioner to Mexico. *Id.* ¶
23 34.

III. LEGAL STANDARD

This Court has jurisdiction over Petitioner's habeas corpus petition under 28 U.S.C. § 2241, which authorizes federal district courts to grant writs of habeas corpus to individuals in custody in violation of the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3). Jurisdiction is proper in the district where the petitioner is physically detained and where the immediate custodian is located. *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). Here, Petitioner is detained at the NWIPC in Tacoma, Washington, within the Western District of Washington, and the respondents include officials with custody over him. *See Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 495 (1973). The petition does not seek review of the removal order itself, which would be barred by 8 U.S.C. § 1252(a)(5), but rather challenges the constitutionality of continued detention, thus invoking proper habeas jurisdiction.

IV. ARGUMENT

A. Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)

Petitioner inaccurately cites 8 U.S.C. § 1231 as his detention authority and due process analysis pursuant to *Zadvydas*. 533 U.S. 678 (2001). On July 25, 2014, Petitioner applied for admission into the United States from Mexico through the San Ysidro, California Port of Entry, thus he is an arriving alien. Leyba Decl. ¶ 8; Morris Decl., Exs. 3-4. After a final order of removal was entered in March 2018 and the BIA dismissed Petitioner's appeal in 2020, the Petitioner filed a PFR with the Ninth circuit in December 2020. *Id.* ¶¶ 24-26. In April 2025, the Ninth Circuit dismissed Petitioner's PFR. Leyba Decl. ¶ 27. In June 2025, the Ninth Circuit re-instated Petitioner's PFR. *Id.* ¶ 28. At that time, no stay of removal had been issued prohibiting Petitioner's removal. *Id.* ¶ 29.

On August 13, 2025, ICE detained Petitioner for the purpose of executing the removal order. *Id.* ¶ 30. That same day, Petitioner filed a motion to stay removal with the Ninth Circuit.

1 *Id.* ¶ 32. Pursuant to General Order 6.4(c), a stay of Petitioner’s removal went into effect. *Id.* On
2 February 13, 2026, the Ninth Circuit denied Petitioner’s PFR. *Id.* ¶ 33. The temporary stay
3 remains in effect until the mandate issues. *Id.*

4 Accordingly, Petitioner is an arriving alien subject to mandatory detention under 8 U.S.C.
5 § 1225(b). *See* 8 U.S.C. § 1231(a)(1)(B)(ii); *see also Jennings v. Rodriguez*, 583 U.S. 281 (2018).
6 Applicants for admission fall into one of two categories. Section 1225(b)(1) covers noncitizens
7 initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid
8 documentation, and certain other aliens designated by the Attorney General in his or her
9 discretion. Separately, section 1225(b)(2) serves as a catchall provision that applies to all
10 applicants for admission not covered by Section 1225(b)(1) (with specific exceptions not relevant
11 here). *Id.* at 287.

12 Congress has determined that all aliens subject to section 1225(b) are subject to mandatory
13 detention regardless of whether an alien falls under Section 1225(b)(1) or (b)(2). Aliens detained
14 under Section 1225(b) may be subject to parole by the Attorney General or Department of
15 Homeland Security (“DHS”), and that is not an issue that the Immigration Judge has authority to
16 consider. *See* INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(a).

17 In contrast to mandatory detention under 8 U.S.C. § 1225(b), 8 U.S.C. § 1226(a) applies
18 to aliens in removal proceedings who are not subject to mandatory detention and grants the
19 Secretary discretionary authority to detain the alien or release him on bond or conditional parole,
20 subject to a custody redetermination hearing before an immigration judge. 8 C.F.R. §§
21 236.1(d)(1), 1003.19(a). At such hearing, the alien bears the burden to show he is not a flight risk
22 or danger to the community. 8 C.F.R. § 236.1(c)(8); *In re Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A.
23 2006).

24 Federal Respondents acknowledge that this Court has reached a different conclusion

1 concerning the scope of Section 1225(b)(2)(A) detention. *Cotoc Yac De Yac v. Hermosillo*, No.
2 2:25-CV-02593-DGE-TLF, 2026 WL 124334, at *2 (W.D. Wash. Jan. 16, 2026). However,
3 Petitioner is more than an applicant for admission, he is an arriving alien who is clearly subject
4 to mandatory detention under Section 1225(b). *Id.*, at 3 (distinguishing a person who has been
5 designated as an arriving alien); 8 C.F.R. § 235.3(c)(1); Morris Decl., Ex. 1 (NTA – designating
6 Petitioner as an arriving alien). Thus, Petitioner is subject to mandatory detention under 8 U.S.C.
7 § 1225(b).

8 While Petitioner was ordered released on bond by an immigration judge, this does not
9 change that he is subject to mandatory detention. While Federal Respondents acknowledge that
10 this Court has recently found that a person released on OREC to not be detained under Section
11 1225(b), Respondents respectfully submit that this a unique case and that release pursuant to an
12 order by an immigration judge is different than an independent assessment by DHS to release on
13 OREC.

14 Federal Respondents acknowledge that district courts have found that due process requires
15 pre-detention hearings prior to re-detention of aliens, as described below, due process did not
16 require a pre-detention hearing here. Accordingly, this Court should not grant Petitioner's request
17 for immediate release from immigration detention.

18 **B. Petitioner's continued detention without a court-ordered bond hearing is**
19 **constitutional.**

20 Petitioner has not shown that he is in immigration custody in violation of the Constitution,
21 law, or treaties of the United States. 28 U.S.C. § 2241. ICE lawfully detains him pursuant to 8
22 U.S.C. § 1225(b), which mandates detention of arriving aliens. Individuals detained under
23 Section 1225(b), including Petitioner, are not entitled to an individualized bond hearing simply
24 due to the passage of time.

1 The Supreme Court has considered whether 8 U.S.C. § 1225(b) imposes a time-limit on
2 the length of detention and whether such aliens detained under this statutory authority have a
3 statutory right to a bond hearing. *See Jennings*, 583 U.S. at 297-303. The Court rejected both
4 arguments, holding that Section 1225(b) mandates detention during the pendency of removal
5 proceedings and provides no entitlement to a bond hearing. *See id.*, at 303 (“Nothing in the
6 statutory text imposes any limit on the length of detention.”). While *Jennings* forecloses any
7 statutory or categorical constitutional right to a bond hearing under Section 1225(b), it did not
8 reach the issue of whether prolonged detention without such a hearing could, in individual cases,
9 raise a due process concern.

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

21 The first *Banda* factor looks at the length of the petitioner’s immigration detention.
22 Petitioner has been detained since August 13, 2025. Leyba Decl. ¶ 30; Pet., ¶ 2. While Federal
23 Respondents acknowledge that his detention has become prolonged, this Court should note that
24 the current length of his detention has not reached the length of what many courts have found to

1 be unreasonable. *See Hong v. Mayorkas*, No. 2:20-cv-1784, 2021 WL 8016749, at *5 (W.D.
2 Wash. June 8, 2021), *report and recommendation adopted*, 2022 WL 1078627 (W.D. Wash. Apr.
3 11, 2022) (collecting cases finding prolonged detention from 13 months to 32 months without a
4 court-ordered bond hearing to have become unreasonable). Therefore, at worst, this factor should
5 be neutral.

6 The second *Banda* factor assesses the length of future detention. While Petitioner's
7 removal proceedings are currently stayed pending issuance of its mandate, the Ninth Circuit has
8 already denied the PFR. Leyba Decl. ¶¶ 32-33. Once the mandate issues, Petitioner's removal to
9 Mexico is imminent. Thus, this Court should find this factor to heavily favor Federal
10 Respondents.

11 As for the third *Banda* factor – conditions of detention, Petitioner is detained at the
12 NWIPC.

13 The fourth *Banda* factor assesses delays caused by the petitioner. Because there is no
14 evidence that Petitioner has intentionally caused any delay, this factor likely favors Petitioner.
15 Likewise, because the government has not intentionally caused any delay, the fifth *Banda* factor
16 favors Federal Respondents.

17 The last *Banda* factor weighs the likelihood that removal proceedings will result in a final
18 order of removal. Because Petitioner is subject to a final order of removal, he has exhausted his
19 appellate remedies, and his PFR has been denied, this factor weighs heavily in favor of Federal
20 Respondents.

21 In total, the *Banda* factor analysis demonstrates that most factors favor Federal
22 Respondents or are neutral. Without a clear showing that his ongoing detention without a court-
23 ordered bond hearing violates due process, this Court should deny Petitioner's request for release
24 or a bond hearing.

C. Petitioner's re-detention did not require a pre-deprivation hearing to comply with due process

Petitioner's re-detention did not require a pre-deprivation hearing to satisfy due process. A pre-deprivation hearing was not legally required prior to his re-arrest in August 2025. Pet., pp. 49–66. At the time ICE took Petitioner into custody, he was subject to a pending petition for review in which no stay of removal had been entered. Leyba Decl. ¶¶ 27–29. None of the cases cited by Petitioner imposes a requirement for a pre-deprivation hearing in the context of pre-order release where a removal order has already become administratively final. Indeed, federal law mandates detention during the 90-day period following the finalization of a removal order in order to effectuate removal. 8 U.S.C. §§ 1231(a)(1)(A), (a)(2). Here, Petitioner's mandatory detention period would have started when the BIA dismissed his appeal, and therefore his detention authority—at the time of re-detention—was pursuant to 8 U.S.C. §1231(a)(6). Accordingly, ICE had lawful authority to re-detain Petitioner in August 2025. The subsequent issuance of a stay of removal by the Ninth Circuit does not retroactively invalidate ICE's authority at the time of detention. Once the Ninth Circuit issued the stay, any post-stay period would be governed by 8 U.S.C. § 1225(b) rather than § 1231(a). Therefore, there is no basis to grant habeas relief solely on the grounds of Petitioner's re-detention. This case involves circumstances, both administrative and appellate, that do not warrant relief.

D. Executive authority and separation of powers claims are inapplicable

Petitioner's claim under Count II—that the Executive Branch violated Article III and the separation of powers by allegedly defying judicial authority—is inapplicable here. Pet., ¶¶ 77-97. At the time of Petitioner's re-detention in August 2025, ICE acted pursuant to a final removal order and in full compliance with the law; no court had issued a stay or injunction limiting ICE's authority. Leyba Decl. ¶¶ 27–29. The subsequent Ninth Circuit stay does not retroactively render

1 lawful detention unlawful, and the government did not act in defiance of any judicial order.
2 Accordingly, Petitioner's separation-of-powers argument provides no basis for relief under these
3 circumstances.

4 **V. CONCLUSION**

5 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
6 the Petition.

7 Dated this 23rd day of February, 2026.

8 Respectfully submitted,

9 s/ Alixandria K. Morris

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16 I certify that this memorandum contains 2,984
17 words, in compliance with the Local Civil Rules.