

District Judge Ricardo S. Martinez

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

JOSE ZAMBRANO-VAZQUEZ,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

Case No. 2:26-cv-00122-RSM

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for Consideration:
February 2, 2026.

I. INTRODUCTION

This habeas petition should be denied because Petitioner's detention is expressly authorized by statute, consistent with Supreme Court precedent, and does not violate due process. Petitioner is detained pursuant to 8 U.S.C. § 1225(b), which mandates detention of aliens during removal proceedings and provides no entitlement to a bond hearing. His attempt to repackage that challenge as claims under the Administrative Procedure Act fails as a matter of law because habeas corpus—not the APA—is the exclusive vehicle for challenging custodial detention, and because the challenged custody determination is not a final agency action. Nor has Petitioner

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 shown that the length or circumstances of his detention have become constitutionally
2 unreasonable under the multi-factor analysis applied by courts in this District. Accordingly, the
3 Petition should be denied in its entirety.

4 II. FACTUAL AND PROCEDURAL BACKGROUND

5 A. 8 U.S.C. § 1225(b)

6 The Immigration and Nationality Act (“INA”) governs the detention and release of
7 noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594
8 U.S. 523, 527 (2021). The general detention periods are generally referred to as “pre-order”
9 (meaning before the entry of a final order of removal) and, relevant here, “post-order” (meaning
10 after the entry of a final order of removal). *Compare* 8 U.S.C. § 1225 (requiring mandatory pre-
11 order detention) *with* § 1231(a) (authorizing post-order detention).

12 Applicants for admission under 8 U.S.C. § 1225 fall into one of two categories. Section
13 1225(b)(1) covers noncitizens initially determined to be inadmissible due to fraud,
14 misrepresentation, or lack of valid documentation, and certain other aliens designated by the
15 Attorney General in her discretion. Separately, section 1225(b)(2) serves as a catchall provision
16 that applies to all applicants for admission not covered by Section 1225(b)(1) (with specific
17 exceptions not relevant here). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

18 B. Interim Parole under 8 U.S.C. § 1182(d)(5)(A)

19 While all noncitizens detained pursuant to 8 U.S.C. § 1225(b) are subject to mandatory
20 detention, they may be subject to parole by the Attorney General or Department of Homeland
21 Security (DHS), and that is not an issue that the Immigration Judge has authority to consider. *See*
22 INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. 212.5(a) (2025) (designating who may
23 exercise authority to grant parole); *see also Jennings*, 583 U.S. at 300 (noting that the Attorney
24 General may grant aliens detained under section 235(b)(1) temporary parole into the United States

1 “for urgent humanitarian reasons or significant public benefit” (quoting INA § 212(d)(5)(A), 8
2 U.S.C. § 1182(d)(5)(A)). This discretionary parole is statutorily required to be “temporary parole”
3 under 8 U.S.C. § 1182(d)(5)(A), and the statute does not grant the Attorney General or DHS the
4 discretion to grant indefinite parole to those subject to mandatory detention.

5 Federal regulations govern the expiration of parole and state that where the parole has
6 expired, “no written notice shall be required.” 8 C.F.R. § 212.5(e)(1).

7 **C. Petitioner Jose Zambrano-Vasquez**

8 On May 2, 2011, Petitioner was arrested by the Vancouver Police Department,
9 Washington, for malicious mischief in the third degree and park curfew violation. Declaration of
10 Christopher Hubbard (“Hubbard Decl.”) ¶ 3(a). Available records indicate he was convicted on
11 July 18, 2011, and sentenced to 90 days jail, 85 suspended, and a \$1,000 fine, but it is unclear
12 which charge, or both, resulted in a conviction due to lack of a full criminal record. *Id.*

13 Petitioner was first encountered by ICE on or about May 4, 2011, upon his release from
14 the Clark County jail in Washington. *Id.* ¶ 4. Petitioner was interviewed and admitted to entering
15 the United States unlawfully in approximately 1991. *Id.* Petitioner did not have any legal status
16 at the time of this encounter and was therefore unlawfully present in the United States in violation
17 of Section 212(a)(6)(A)(i) of the INA. *Id.*

18 On May 4, 2011, Petitioner was served with a Notice to Appear (“NTA”). *Id.*; Declaration
19 of Alixandria K. Morris (“Morris Decl.”), Exs. 1-2 (NTA; I-213). That same day, Petitioner was
20 released in ICE’s discretion with a \$2,500 immigration bond. Hubbard Decl. ¶ 4.

21 On October 31, 2012, Petitioner was arrested by the Vancouver Police Department,
22 Washington, for possession of marijuana and possession of methamphetamine. Hubbard Decl. ¶
23 3(b). The possession of methamphetamine charge was dismissed but Petitioner was convicted of
24 the possession of marijuana charge and sentenced to 90 days jail, 40 days suspended with credit

1 for 50 days served, along with costs and fines². *Id.* On November 29, 2012, the immigration
2 proceedings were administratively closed due to the respondent being in state custody on criminal
3 charges. Hubbard Decl. ¶ 5.

4 On December 26, 2012, Petitioner was transferred from state custody back into ICE
5 custody. Hubbard Decl. ¶ 6. Petitioner's immigration court proceedings were re-calendared as a
6 result. *Id.* On February 19, 2013, a bond hearing was held before the immigration judge. *Id.* ¶ 7.
7 Bond was denied at that time due to Petitioner being subject to mandatory detention under INA §
8 236(c) as a result of his controlled substance conviction. *Id.*

9 On September 27, 2013, ICE reviewed its own custody determination at Petitioner's
10 request but declined to release Petitioner or grant a bond. *Id.* ¶ 8. This was because of Petitioner's
11 criminal activity while previously on bond. *Id.* On October 8, 2013, the immigration judge
12 redetermined Petitioner's bond due to then-current case law and reduced it from no bond to \$8,000
13 bond. *Id.* ¶ 9. Petitioner posted the bond and was released. *Id.*

14 On July 7, 2014, ICE and Petitioner agreed to administratively close the immigration
15 proceedings due to ICE's enforcement priorities in place at that time. *Id.* ¶ 10; Morris Decl., Ex.
16 3.

17 On November 12, 2025, Petitioner was arrested by ICE and transported to the NWIPC.
18 Petitioner's immigration proceedings were recalendared. Hubbard Decl. ¶ 11. On December 17,
19 2025, a bond hearing was held before the immigration judge and bond was denied. *Id.* ¶ 12.

20 Petitioner's next court date is scheduled for January 30, 2026. *Id.* ¶ 13. He has filed a
21 Form I-589, an application for asylum, withholding of removal, and protection under the
22

23
24 ² Petitioner's conviction was later vacated on September 24, 2021, due to the intervening court decision in *State v. Blake*, 197 Wash.2d 170, 481 P.3d 521 (2021). Hubbard Decl. ¶ 3(b).

Convention Against Torture, and a Form E-42B, an application for cancellation of removal for certain nonpermanent residents. *Id.* Petitioner remains in custody at the NWIPC. *Id.* ¶ 14.

III. LEGAL STANDARD

It is axiomatic that “[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon Mobil Corp. v. Allopah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). . Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions.

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

IV. ARGUMENT

A. Petitioner’s Administrative Procedure Act claims must be dismissed for lack of Subject Matter Jurisdiction

Petitioner seeks to challenge his detention on grounds that violated Sections 706(2)(A), (B) and (C) of the Administrative Procedure Act (“APA”). Dkt. 1 (“Pet.”) ¶ 3. The Court has no subject matter jurisdiction to hear these claims.

Where other adequate statutory remedies exist, the APA does not apply. *See* 5 U.S.C. § 704 (“Agency action made reviewable by statute and final agency action *for which there is no other adequate remedy in a court* are subject to judicial review.”) (emphasis added). Simply put, “federal courts lack jurisdiction over APA challenges whenever Congress has provided another ‘adequate remedy.’” *Brem-Air Disposal v. Cohen*, 156 F.3d 1002, 1004 (9th Cir. 1998).

1 Because habeas corpus is a fully adequate remedy on a claim seeking redress for custodial
 2 detention that is alleged to be unlawful, relief is jurisdictionally unavailable under the APA. *See*
 3 *Trump v. J. G. G.*, 604 U.S. 670, 671 (2025) (vacating TROs based on the APA because Plaintiffs’
 4 claims necessarily implied the invalidity of the Plaintiffs’ confinement and removal under the
 5 “Alien Enemies Act” and so had to be brought as habeas corpus claims in the jurisdiction of their
 6 confinement). As Justice Kavanaugh stated in his concurring opinion, “[e]specially given the
 7 history and precedent of using habeas corpus to review transfer claims, and given 5 U.S.C. § 704,
 8 which states that claims under the APA are not available when there is another ‘adequate remedy
 9 in a court,’ I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.”
 10 *Id.* at 674; *cf. O’Banion v. Matevousian*, 835 Fed. Appx. 347, 350 (10th Cir. 2020) (holding that
 11 “habeas actions” provide an “adequate remedy” displacing APA review under Section 704); *and*
 12 *see Lucas v. Fed. Bureau of Prisons*, 2018 WL 3038496, at *2 (S.D.N.Y. June 19, 2018)
 13 (“Accordingly, because plaintiff could adequately remedy his conditions of confinement claim in
 14 a habeas corpus petition, the Court does not have jurisdiction to decide his APA claim.”).

15 Moreover, to be reviewable under the APA an action must be a “final agency action,”
 16 which is to say that it is the “consummation of the agency’s decision-making process.” *See Bennett*
 17 *v. Spear*, 520 U.S. 154, 177–78 (1997). Administrative detention during removal proceedings is
 18 an interim step, not a final agency action. *See Gamez Lira v. Noem*, 2025 WL 2581710, at *4
 19 (D.N.M. Sept. 5, 2025). Accordingly, Petitioner’s claims based on alleged APA should be denied.

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

22 Petitioner has not shown that he is in immigration custody in violation of the Constitution,
 23 law, or treaties of the United States. 28 U.S.C. § 2241. ICE lawfully detains him pursuant to 8
 24 U.S.C. § 1225(b), which mandates detention. Individuals detained under Section 1225(b),

1 including Petitioner, are not entitled to an individualized bond hearing based solely on the passage
2 of time.

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

12 Petitioner’s continued detention without a court-ordered bond hearing does not violate his
13 Fifth Amendment due process rights. Courts in this District analyze prolonged detention using
14 the *Banda* multi-factor test. *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1117-118 (W.D.
15 Wash. 2019). Petitioner’s approximately two-month detention is not prolonged. *Id.* However,
16 even if this Court were to apply the *Banda* factors, application of those factors demonstrates that
17 Petitioner’s detention has not become constitutionally unreasonable.

18 In *Banda*, the district court found that the petitioner’s 17-month immigration detention
19 pursuant to 8 U.S.C. § 1225(b) had become unreasonable. *Id.*, at 1117-121. To conduct this
20 analysis, the court analyzed six factors: (1) length of detention; (2) how long detention is likely
21 to continue absent judicial intervention; (3) conditions of detention; (4) the nature and extent of
22 any delays in the removal caused by the petitioner; (5) the nature and extent of any delays caused
23 by the government; and (6) the likelihood that the final proceedings will culminate in a final order
24

1 of removal. *See id.* Analysis of these factors demonstrates that Petitioner's detention, while
2 prolonged, has not become unreasonable.

3 The first *Banda* factor looks at the length of the petitioner's immigration detention.
4 Petitioner has been detained since November 12, 2025. Petitioner's approximately two-month
5 detention has not yet become prolonged. Therefore, this factor should significantly favor Federal
6 Respondents or be neutral.

7 The second *Banda* factor assesses the length of future detention. Petitioner's removal
8 proceedings will be stayed pending USCIS's adjudication of his asylum application. Hubbard
9 Decl. ¶ 15. If Petitioner is granted asylum or deferred action, he may be released from detention.
10 But USCIS has not yet issued a decision for either request. Any estimate of future detention would
11 be speculative, at best. Thus, this Court should find this factor to be neutral.

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

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

18 The last *Banda* factor weighs the likelihood that removal proceedings will result in a final
19 order of removal. It is unknown whether Petitioner's applications for relief from removal pending
20 with USCIS will be granted or denied. As speculation would be necessary to evaluate this factor,
21 this factor should be deemed neutral at this time.

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

C. Petitioner's Re-detention Claims are Without Merit

Petitioner's arguments that his current detention violates regulatory or due process protections applicable to "re-detention" following release are misplaced. *See* Pet. ¶¶ 58–60. Those arguments presuppose that Petitioner was previously released from custody pursuant to parole under 8 U.S.C. § 1182(d)(5)(A) or an Order of Recognizance ("OREC") that was later revoked. The record does not support that premise.

Petitioner has presented no evidence that he was released on parole or pursuant to an OREC following administrative closure in 2014. *See* Pet. ¶¶ 15–20; Hubbard Decl. ¶ 10.

Because Petitioner was not released on parole or an OREC, there was no parole or recognizance to revoke, and no regulatory revocation procedures apply. When ICE arrested Petitioner in November 2025 and re-calendared his immigration proceedings, it lawfully exercised its statutory authority to detain him under 8 U.S.C. § 1225(b). That detention flowed directly from Petitioner's status as an applicant for admission placed back into active removal proceedings—not from any alleged "re-detention" following a discretionary release.

D. Petitioner's Arguments Pertaining to Counsel are Without Merit

Petitioner seemingly asserts that continued detention raises constitutional concerns because he allegedly will be unable to communicate with counsel. Pet. ¶¶ 61–63. That argument is both factually unsupported and legally irrelevant to the relief sought. *Id.*

As an initial matter, Petitioner has not demonstrated that he is presently unable to communicate with counsel while detained. *Id.* Generalized assertions about the burdens of detention do not establish a due process violation, particularly where Petitioner is represented and actively litigating his immigration case and this habeas action.

More fundamentally, Petitioner's argument seemingly misunderstands the posture and jurisdictional limits of this Court. Once this habeas case is resolved, this Court will no longer

1 have jurisdiction over Petitioner's custody, and the habeas proceeding will no longer be litigated
2 before this Court. At that point, there will be no ongoing federal habeas matter in which access to
3 counsel before this Court could be impaired. Any speculative concern about future
4 communication with counsel in a closed case is therefore irrelevant.

5 To the extent Petitioner's concern relates to representation in his underlying removal
6 proceedings, those proceedings fall within the exclusive jurisdiction of the immigration court and
7 the Board of Immigration Appeals—not this Court. 8 U.S.C. § 1252(g). Moreover, alleged
8 difficulties in communicating with counsel—without a showing of actual prejudice—do not
9 render otherwise lawful detention unconstitutional and Petitioner has made no such showing here.

10 *See generally* Dkt. 1.

11 Because this Court's jurisdiction will end upon resolution of the habeas petition, and
12 because Petitioner has not shown any present or legally cognizable deprivation of access to
13 counsel, these arguments provide no basis for habeas relief.

14 V. CONCLUSION

15 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
16 the Petition.

17 Dated this 28th day of January, 2026.

18 Respectfully submitted,

19 CHARLES NEIL FLOYD
United States Attorney

20 s/ Alixandria K. Morris
21 ALIXANDRIA K. MORRIS, TX No. 24095373
22 Assistant United States Attorney
United States Attorney's Office
23 Western District of Washington
700 Stewart Street, Suite 5220
Seattle, Washington 98101
24 Phone: 206-553-7970

Fax: 206-553-4067
Email: alixandria.morris@usdoj.gov

Attorneys for Federal Respondents

I certify that this memorandum contains 2,735 words, in compliance with the Local Civil Rules.