

The Honorable Theresa L. Fricke

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SHUKRULLO TAVUROV,

Petitioner,

v.

KRISTI LYNN ARNOLD NOEM, Secretary of
the United States and Department of Homeland
Security; Department of Homeland Security;
PAMELA JO BONDI, Attorney General of the
United States; TODD LYONS, Acting
Commissioner, U.S. Customs and Border
Protection; LAURA HERMOSILLO,¹ Acting
Seattle District Field Office Director of
Detention Removal Operations, Immigration
and Customs Enforcement; BRUCE SCOTT,²
Warden, Northwest Ice Processing Center,

Respondents.

Case No. 2:26-cv-00138-TLF

FEDERAL RESPONDENTS'
RETURN

Noted for Consideration:
February 3, 2026

¹ Laura Hermosillo is the Acting Field Office Director for ICE/ERO's Seattle Field Office and, pursuant to Rule 25(d) of the Federal Rules of Procedure, is hereby substituted as Respondent for Camilla Wamsley.

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

1 **INTRODUCTION**

2 Petitioner, an arriving alien, was processed as an expedited removal. He claimed fear and
3 was placed in removal proceedings following a credible fear interview. An Immigration Judge (IJ)
4 denied all relief, and ordered Petitioner removed to Russia. Petitioner filed an appeal with the
5 Board of Immigration Appeals (BIA), which remains pending. While this appeal is pending and
6 Petitioner's removal proceedings remain ongoing, U.S. Immigration and Customs Enforcement
7 (ICE) is lawfully detaining Petitioner pursuant to Section 235(b)(2) of the Immigration and
8 Nationality Act (INA), codified at 8 U.S.C. § 1225(b)(2).

9 Petitioner's habeas petition seeks his immediate release or an individualized bond hearing.
10 Dkt. 1. The habeas petition should be denied and dismissed without an evidentiary hearing for four
11 reasons: (1) Petitioner is subject to mandatory detention; (2) Petitioner is not entitled to a bond
12 hearing; (3) Petitioner's detention during his appeal is not prolonged; and (4) Petitioner's detention
13 is not indefinite.

14 **FACTUAL BACKGROUND**

15 Petitioner is a native of Tajikistan and citizen of Russia and Tajikistan. *See* Declaration of
16 Javier Delgado (Delgado Decl.) ¶ 3; Declaration of Kristin B. Johnson (Johnson Decl.) Exs. B, D.
17 On May 3, 2024, Petitioner applied to enter the United States from Mexico and was encountered
18 by U.S. Customs and Border Protection (CBP). *Id.* Petitioner admitted to CBP that he did not have
19 any documents that would allow him to enter the United States. *Id.* He was processed for expedited
20 removal. *Id.* While in CBP custody, Petitioner expressed fear of returning to Tajikistan and Russia.
21 *Id.* CPB detained Petitioner under INA § 235(b)(1). *Id.*

22 On May 24, 2024, Petitioner was interviewed by a United States Citizenship and
23 Immigration Services asylum officer who determined that Petitioner had a credible fear of return
24 to Tajikistan. Delgado Decl. ¶ 4; Johnson Decl. Ex. C. That same day, CBP issued a Notice to

1 Appear (NTA) charging Petitioner with being removable pursuant to INA § 212(a)(7)(A)(i)(I) and
2 placing him into removal proceedings. *Id.*

3 On September 4, 2024, Petitioner filed an I-589, Application for Asylum and Associated
4 Relief with the Immigration Court. Delgado Decl. ¶ 5. Petitioner was transferred to the Northwest
5 ICE Processing Center (NWIPC) on September 10, 2024. Delgado Decl. ¶ 6.

6 On October 31, 2025, Petitioner appeared with counsel at a bond hearing before an
7 Immigration Judge. Delgado Decl. ¶ 12; Johnson Decl. Ex. E. The Immigration Judge denied
8 Petitioner's bond due to lack of jurisdiction because Petitioner was an "arriving alien." *Id.*
9 Petitioner requested reconsideration of the bond determination due to changed circumstances, but
10 on November 17, 2025, the Immigration Judge denied Petitioner's request for reconsideration
11 finding no changed circumstances because Petitioner was still an "arriving alien." Delgado Decl.
12 ¶ 14; Johnson Decl. Ex. F.

13 On December 15, 2025, the Immigration Judge issued a written order denying Petitioner's
14 request for relief under form I-589, Application for Asylum and Associated Relief and ordering
15 Petitioner's removal to Russia. Delgado Decl. ¶ 16. On December 18, 2025, Petitioner filed a
16 timely Notice of Appeal to the Board of Immigration Appeals (BIA). Delgado Decl., ¶ 17.
17 Petitioner's appeal remains pending. *Id.*

18 LEGAL STANDARD

19 It is axiomatic that "[t]he district courts of the United States . . . are courts of limited
20 jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil*
21 *Corp. v. Allopeth Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope
22 of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day."
23 *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020). Title 28 U.S.C.
24 § 2241 provides district courts with jurisdiction to hear federal habeas petitions. To warrant a grant

of habeas corpus, the petitioner must demonstrate 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).

ARGUMENT

A. Petitioner is lawfully detained and not entitled to a bond hearing.

Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2) and is subject to mandatory detention while his removal proceedings remain pending. Section 1225(b)(2) states that, subject to statutory exceptions, “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a [full removal proceedings] of this title.” 8 U.S.C. § 1225(b)(2). In other words, noncitizens subject to 1225(b)(2) are not eligible for expedited removal but are subject to mandatory detention while their full removal proceedings are pending. This is in contrast to the default detention regime under Section 1226(a), which allows for discretionary release and review of detention through bond hearings.

Because Petitioner was placed into removal proceedings following a credible fear interview and is subject to mandatory detention under Section 1225(b)(2), he is not entitled to a bond hearing. *See Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018); *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019) (a noncitizen who is transferred from expedited removal proceedings to full removal proceedings after establishing a credible fear or persecution or torture is ineligible for release on bond). “[A]liens who are originally placed in expedited proceedings and then transferred to full proceedings after establishing a credible fear ... remain ineligible for bond, whether they are arriving at the border or are apprehended in the United States.” *Matter of M-S-*, 27 I. & N. Dec. at 515.

B. Petitioner’s detention is not prolonged under *Banda*.

Courts in this District have recognized that “[n]ormally, noncitizens covered by § 1225(b)(1) are subject to an expedited removal process that does not include a hearing before an IJ or review of the removal order.” *Nguyen v. Scott*, C25-1988-SKV, Dkt. 15, pgs. 3-4 (citing *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111-12 (W.D. Wash. 2019) (citing 8 U.S.C. § 1225(b)(1)(A)(i))). Both § 1225(b)(1) and § 1225(b)(2) mandate detention of noncitizens for the entirety of the applicable proceedings. *Id.* (citing *Jennings*, 583 U.S. at 302). And the “statute does not impose ‘any limit on the length of detention’ pending a decision on the asylum application and does not authorize bond hearings or release on bond.” *Id.* (citing *Banda*, 385 F. Supp. 3d at 1112 (quoting *Jennings*, 583 U.S. at 296)).

Courts in this District have noted that both the Supreme Court and Ninth Circuit have “grappled . . . with whether the various immigration detention statutes may authorize indefinite or prolonged detention of detainees and, if so, may do so without providing a bond hearing.” *Id.* (quoting *Rodriguez v. Robbins*, 804 F.3d 1060, 1067 (9th Cir. 2015) (citing *Toktosunov v. Wamsley*, C25-1724-TL, 2025 WL 3492858, at *2-4 (W.D. Wash. Dec. 5, 2025))). While neither the Supreme Court nor the Ninth Circuit has settled on a test for assessing the constitutionality of prolonged mandatory detention, Courts in this District applies the “*Banda*” test in determining whether a noncitizen’s detention under § 1225(b) violates due process. *Id.* (citing *Banda*, 385 F. Supp. 3d at 1106; *Maliwat v. Scott*, C25-788, 2025 WL 2256711, at *3 (W.D. Wash. Aug. 7, 2025); *Hong v. Mayorkas*, C20-1784-LK, 2022 WL 1078627, at *4-5 (W.D. Wash. Apr. 11, 2022)).

In *Banda*, the Court found “unreasonably prolonged detention under § 1225(b) without a bond hearing violates due process.” *Banda*, 385 F. Supp. 3d at 1106, 1117. The Court declined to adopt a rule that detention became unreasonably prolonged at six months, explaining that, pursuant to *Zadvydas*, “at six months, the burden is on the detainee—not the government—to establish a

basis for release[.]” and found such a rule would be “inconsistent with the fact-dependent nature of the constitutional question before the Court, namely whether petitioner’s prolonged detention has become unreasonable.” *Id.* at 1117 (citing *Zadvydas*, 533 U.S. at 701). The Court, instead, adopted a multi-factor test to apply in making the determination of whether § 1225(b) detention has become unreasonable, considering: “(1) the total length of detention to date; (2) the likely duration of future detention; (3) the conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal.” *Id.* at 1106.

An analysis of these factors demonstrates that Petitioner’s detention, while prolonged, has not become unreasonable.

1. Length of Detention

The first factor, the length of detention to date, is the most important one. *See Banda*, 385 F. Supp. 3d at 1118. “The longer mandatory detention continues . . . the harder it is to justify.” *Murillo-Chavez v. Garland*, C22-0303-LK-MLP, 2022 WL 16555994, at *5 (W.D. Wash. Aug. 30, 2022), *report and recommendation adopted*, 2022 WL 16553176 (W.D. Wash. Oct. 31, 2022) (citing cases).

Here, Petitioner has been continuously detained at least since September 10, 2024, when he was transferred to the NWIPC – approximately sixteen months as the date of this return.³ Delgado Decl. ¶ 6. This period of detention falls within the range of what Courts in this District typically find unreasonable. *See Nguyen*, C25-1988-SKV, Dkt. 15, pgs. 3-4 (citing *Maliwat*, 2025 WL 2256711, at *4 (citing cases finding periods of detention ranging from eleven to thirty

³ It is unclear whether Petitioner has been detained continuously from the date he appeared at the United States Port of Entry on May 3, 2024, or whether he was released and re-detained, but it is clear he has been at the NWIPC since September 10, 2024.

1 months to favor the detainee; finding same for a petitioner detained for nearly twelve months);
2 *Toktosunov*, 2025 WL 3492858, at *4 (finding sixteen months of detention favored detainee);
3 *Banda*, 385 F. Supp. at 1118-19 (finding approximate seventeen-month detention strongly favored
4 detainee). Therefore, the first *Banda* factor likely weighs in Petitioner's favor.

5 **2. Likely Duration of Future Detention**

6 Under the second *Banda* factor, the Court considers how long the petitioner's detention is
7 likely to continue absent judicial intervention, i.e., "the anticipated duration of all removal
8 proceedings—including administrative and judicial appeals." *Banda*, 385 F. Supp. 3d at 119
9 (quoting *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. Jan. 22, 2019)). Here,
10 Petitioner's appeal with the BIA has been pending since December 18, 2025. Delgado Decl. ¶ 17.
11 Courts in this District have observed that BIA appeals can take over six months and have
12 recognized that any further appeals to the federal courts will take substantial time to resolve. *See*
13 *Nguyen*, C25-1988-SKV, Dkt. 15, pgs. 3-4 (citing *Toktosunov*, 2025 WL 3492858, at *5). Given
14 that Petitioner's appeals process may take several months this factor likely weighs in Petitioner's
15 favor.

16 **3. Conditions of Detention**

17 Under the third *Banda* Factor, the Court considers the conditions of the petitioner's
18 detention at the facility where he or she is currently detained. "The more that the conditions under
19 which the [noncitizen] is being held resemble penal confinement, the stronger his argument that
20 he is entitled to a bond hearing." *Banda*, 385 F. Supp. at 1119 (quoted source omitted). Here,
21 Petitioner asserts that he is receiving delayed medical care, and his mental health condition has
22 gone untreated at the NWIPC. Dkt. 1. But he does not otherwise address the conditions at NWIPC.
23 While courts in this District have found that in some circumstances and at some times, the
24 conditions at NWIPC have been similar to those in many prisons and jails, *Maliwat*, 2025 WL

2256711, at *6, *Toktosunov*, 2025 WL 3492858, at *5, Respondents disagree that the conditions at the NWIPC resemble penal confinement. Most importantly, Petitioner here has not alleged any specific conditions that he has been subject to at the NWIPC that resemble “penal confinement.” Thus, the third factor weighs in Respondents’ favor.

4. Delays in the Removal Proceedings Caused by Petitioner

Under the fourth *Banda* factor, the Court considers delays in the removal proceedings caused by the petitioner. *See Banda*, 385 F. Supp. 3d at 1119. Here, Petitioner’s underlying removal proceedings were delayed for several months due to Petitioner’s repeated requests for continuances. The NTA was issued on May 24, 2024. Delgado Decl. ¶ 4. Petitioner filed a motion to continue his removal proceedings on January 9, 2025, a motion for substitution of counsel on July 11, 2025, another motion to continue on July 22, 2025, and his individual hearing on his underlying applications did not begin until August 26, 2025. Delgado Decl. ¶¶ 7-10. Thus, Petitioner’s requests for continuances created a nearly eight-month delay from January to August. Thus, the fourth factor weighs in Respondents’ favor.

5. Delays in the Removal Proceedings Caused by Respondents

Under the fifth *Banda* factor, the Court “considers the nature and extent of any delays in the removal proceedings caused by the government.” *Banda*, 385 F. Supp. at 1120. Petitioner does not point to any delays in his case occasioned by Respondents, and the record does not evince any. Absent any indication of a respondent-caused delay, this factor weighs neutral. *See Nguyen*, C25-1988-SKV, Dkt. 15, pgs. 3-4 (citing *Toktosunov*, 2025 WL 3492858, at *5).

6. Likelihood Removal Proceedings Will Result in Final Order of Removal

Finally, under the sixth *Banda* factor, the Court considers “the likelihood that the final proceedings will culminate in a final order of removal.” *Banda*, 385 F. Supp. 3d at 1120 (quoted source omitted). The Court, in other words, considers whether the petitioner has asserted any

1 defenses to removal. *Id.* “Where a noncitizen has not asserted any grounds for relief from removal,
2 presumably the noncitizen will be removed from the United States, and continued detention will
3 at least marginally serve the purpose of detention, namely assuring the noncitizen is removed as
4 ordered.” *Id.* (cited source omitted). “But where a noncitizen has asserted a good faith challenge
5 to removal, ‘the categorical nature of the detention will become increasingly unreasonable.’” *Id.*
6 (quoted source omitted).

7 Petitioner has applied for various forms of relief and was denied. Delgado Decl. ¶¶ 5, 16.
8 He is presently litigating his appeal. Delgado Decl. ¶ 17. This Court is not presently positioned to
9 determine whether Petitioner’s appeal is nonfrivolous or the likelihood that he will prevail.
10 Accordingly, this factor weighs neutral. *See Nguyen*, C25-1988-SKV, Dkt. 15, pgs. 3-4.

11 **7. Weighing the Factors**

12 In sum, two factors (length of detention and duration of future detention) weigh in
13 Petitioner’s favor, while two factors (conditions of confinement, delays in removal proceedings
14 caused by Petitioner) weigh in Respondents’ favor, and two factors (delays caused by
15 Respondents, and likelihood removal proceedings will result in final order of removal) are neutral.
16 Thus, the Court should find that the *Banda* test, on balance, favors Respondents, that Petitioner’s
17 continued detention under § 1225(b) has not yet become unreasonable, and that due process does
18 not require the Government to provide Petitioner with a court-ordered bond hearing.

19 **C. Petitioner’s detention is not indefinite under *Zadvydas*.**

20 This Court should deny Petitioner’s request for immediate release from immigration
21 detention. A noncitizen is entitled to release if he can show that his immigration detention is
22 indefinite as defined in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). *Hong v. Mayorkas*, No. 2:20-
23 cv-1784, 2021 WL 8016749, at *6 (W.D. Wash. June 8, 2021), *report and recommendation*
24 *adopted*, 2022 WL 1078627 (W.D. Wash. Apr. 11, 2022). While Petitioner’s detention continues

1 while his removal proceedings are ongoing, he cannot allege that his detention has become
2 indefinite. Petitioner has presented no evidence that ICE will be unable to remove him if his
3 removal order ultimately becomes final. Nor has Petitioner provided any legal basis for his
4 immediate release from detention while detained pursuant to 8 U.S.C. § 1226(a).

5 To the contrary, ICE has stated that ERO routinely removes noncitizens with removal
6 orders to Honduras. Hubbard Decl. at ¶ 13. ERO does not anticipate difficulty removing Petitioner
7 to Honduras once there is no longer a stay of removal. *Id.* When the mandate issues, ERO will
8 remove Petitioner to Honduras in the normal course. *Id.* Accordingly, Petitioner's detention is not
9 indefinite and this Court should deny Petitioner's request for immediate release.

10 **D. Petitioner's complaints regarding medical care are improper.**

11 Petitioner appears to raise a conditions of confinement claim concerning his purported lack
12 of medical care in ICE detention. Dkt. 1. This Court should not consider a conditions of
13 confinement claim as part of a 28 U.S.C. § 2241 habeas corpus petition. Challenges to the legality
14 or duration of confinement should be pursued in a habeas proceeding, *see Crawford v. Bell*,
15 599 F.2d 890, 891 (9th Cir. 1979), while challenges to conditions of confinement should be
16 pursued in a civil rights action. *See Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991). Moreover,
17 "[t]he appropriate remedy for such constitutional violations, if proven, would be a judicially
18 mandated change in conditions and/or an award of damages, but not release from confinement."
19 *Crawford*, 599 F.2d at 891.

20 While courts in this District have adjudicated conditions of confinement claims related to
21 the COVID-19 pandemic, those cases were decided under unique circumstances not present here.
22 *See, e.g., Dawson v. Asher*, No. 20-cv-0409, 2020 WL 1704324, at *8-9 (W.D. Wash. Apr. 8,
23 2020) (explaining the circumstances under which the Court undertook consideration of COVID-
24 19-related conditions of confinement claims in petitions brought under 28 U.S.C. § 2241).

1 Accordingly, this Court should decline to extend such consideration to any conditions of
2 confinement claim in this case.

3 WHEREFORE, Petitioner's habeas petition seeking immediate release or a bond hearing
4 should be dismissed without an evidentiary hearing.

5 DATED this 29th day of January, 2026.

6 Respectfully submitted,

7 CHARLES NEIL FLOYD
8 United States Attorney

9 s/ Kristin B. Johnson

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19 I certify that this memorandum contains 2,901 words,
20 in compliance with the Local Civil Rules.