District Judge Ricardo S. Martinez

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

Z.A., Petitioner, v. LAURA HERMOSILLO, *et al.*, Respondents.	Case No. 2:26-cv-00144-RSM FEDERAL RESPONDENTS'[1] RETURN MEMORANDUM Noted for Consideration: February 4, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") lawfully detains Petitioner pursuant to 8 U.S.C. § 1225(b)(1). Federal Respondents submit the following factual background as contained in the records of Petitioner's immigration case, as well as the relevant detention authority and argument.

II. RELEVANT BACKGROUND

Petitioner is a native and citizen of Yemen who unlawfully entered the United States by crossing the Rio Grande River on or about June 20, 2021. Baz Decl., ¶¶ 4, 5; Dkt. No. 3, at ECF25-

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

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

27. Local law enforcement encountered Petitioner, and Border Patrol subsequently took him into custody. Baz Decl., ¶ 5. U.S. Department of Homeland Security ("DHS") issued Petitioner a notice and order of expedited removal pursuant to 8 U.S.C. § 1225(b)(1). Baz Decl., ¶ 7; Lambert Decl., Ex. A, Notice and Order of Expedited Removal. In addition, Petitioner was criminally charged with 19 U.S.C. § 1459. Baz Decl., ¶ 6. On February 18, 2022, he was convicted of violating Section 1459 and sentenced to eight months federal incarceration. Baz Decl., ¶ 8; Lambert Decl., Ex. B, Judgment. In March 2022, Petitioner completed his sentence; ICE took him into custody. Baz Decl., ¶ 9; Lambert Decl., Ex. C, Form I-213.

Because Petitioner claimed fear of return to Yemen, U.S. Citizenship and Immigration Services ("USCIS") conducted a credible fear interview pursuant to 8 U.S.C. § 1225(b)(1)(B). Baz Decl., ¶ 10. On April 8, 2022, USCIS issued a notice to appear placing Petitioner into full removal proceedings after finding Petitioner had a credible fear of persecution or torture. Baz Decl., ¶¶ 11, 12; Lambert Decl., Ex. D, Notice to Appear.

On June 6, 2022, an immigration judge granted Petitioner release on bond of $20,000. Baz Decl., ¶ 14; Lambert Decl., Ex. E, Order of the Immigration Judge; Ex. F, Notice of Release. On the same date, Petitioner filed an asylum application with the immigration court. Baz Decl., ¶ 14.

On June 21, 2025, Canadian Border Patrol returned Petitioner to the United States at the Pacific Highway Port of Entry in Blaine, Washington. Baz Decl., ¶ 19; Lambert Decl., Ex. G, Canadian Inadmissibility Documentation. Petitioner had been denied entry into Canada and returned to the United States per the Safe Third Country Agreement. Rodriguez Decl., ¶ 19. U.S. Border Patrol took him into custody, and he was thereafter transferred to ICE custody at the Northwest ICE Processing Center. Baz Decl., ¶ 19; Dkt No. 3, at ECF28-29; Lambert Decl., Ex. H, Warrant for Arrest; Ex. I, Notice of Custody Determination.

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

On October 31, 2025, an immigration judge denied all applications for relief and ordered Petitioner be removed to Yemen. Baz Decl., ¶ 20; Dkt No. 3, at ECF35-38. Petitioner has a pending appeal of this order at the Board of Immigration Appeals ("BIA"). Baz Decl., ¶¶ 21, 22.

III. LEGAL STANDARD

"The 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. Allopath 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 is lawfully detained pursuant to 8 U.S.C. § 1225(b).

Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(1). Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the Executive could "expedite removal of aliens lacking a legal basis to remain in the United States." *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Thuraissigiam*, 591 U.S. at 106 ("[Congress] crafted a system for weeding out patently meritless claims and expeditiously removing the aliens making such claims from the country."). Section 1225 applies to "applicants for admission" to the United States, who are defined as "alien[s] present in the United States who [have] not been admitted" or noncitizens "who arrive[ ] in the United States," whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

§ 1225(b)(1) and those covered by § 1225(b)(2)," both of which are subject to mandatory detention. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Relevant here, Section 1225(b)(1) applies to "arriving aliens" and "certain other" noncitizens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Expedited removal proceedings under Section 1225(b)(1) include additional procedures if a noncitizen indicates an intention to apply for asylum[2] or expresses a fear of persecution, torture, 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 the asylum officer or immigration judge does not find a credible fear, the noncitizen is "removed from the United States without further hearing or review." 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I), (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 officer or immigration judge finds a credible fear, like in this instance, the noncitizen is generally placed in full removal proceedings under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8 C.F.R. § 208.30(f); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

Expedited removal under Section 1225(b)(1) is a distinct statutory procedure from removal under Section 1229a. Section 1229a governs full removal proceedings initiated by a notice to appear and conducted before an immigration judge, during which the noncitizen may apply for relief or protection. By contrast, expedited removal under Section 1225(b)(1) applies in narrower, statutorily defined circumstances and allows for their removal without a hearing before an immigration judge, subject to limited exceptions. For these noncitizens, DHS has discretion to pursue expedited removal under Section 1225(b)(1) or Section 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011).

---

[2] 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).

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

The sole means of release from detention pursuant to Section 1225(b) is temporary parole "'for urgent humanitarian reasons or significant public benefit,' § 1182(d)(5)(A)." *Jennings*, 583 U.S. at 283. This parole terminates automatically at the expiration of the time for which parole was authorized, or upon service of a charging document for either expedited removal proceedings under Section 1225(b) or removal proceedings under Section 1229a. 8 C.F.R. §§ 212.5(e)(1); (2)(i). Upon termination of parole, the applicant reverts to the status that he or she had at the time of parole. *See id.* However, an immigration judge released Petitioner on bond here.[3]

While Petitioner does not dispute that he is detained pursuant to 8 U.S.C. § 1225(b), Petitioner challenges his detention with two claims. First, Petitioner asserts that he is a prima facie eligible applicant for Temporary Protected Status ("TPS") and should be released. Pet., ¶¶ 66-71. However, USCIS has not determined that Petitioner has a prima facie TPS application, which was only filed in December 2025. Until that occurs, Petitioner is not eligible for temporary TPS benefits. Second, Petitioner claims that his detention violates due process. Pet., ¶¶ 72-78. He argues that his bond was unlawfully revoked and that his prolonged detention "does not bear a reasonable relation to a lawful immigration purpose." As described below, neither claim has merit.

B. Petitioner's pending TPS application does not prevent his detention.

Although he asserts that he is prima facie eligible for TPS, Petitioner's opinion of his eligibility does not provide him with a prima facie designation or temporary benefits. has authorized the Secretary of Homeland Security to designate foreign countries for TPS under certain conditions. 8 U.S.C. § 1254a(b)(1).[4] Those found eligible for the TPS program are entitled to

---

[3] Petitioner's bond order states that the custody redetermination was conducted pursuant to 8 C.F.R. § 1236. Undersigned counsel could locate no documentation as to whether the immigration judge found Petitioner to be detained pursuant to 8 U.S.C. § 1226(a) rather than 8 U.S.C. § 1225(b)(1).

[4] Although the Immigration and Nationality Act originally granted this authority to the Attorney General, Congress later transferred it to the Secretary of Homeland Security. *See Homeland Security Act of 2002*, Public Law No. 107-296, 116 Stat. 2135 (2002).

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

certain benefits, including temporary protection from removal and authorization to engage in employment in the United States. *See* 8 U.S.C.A § 1254a(a)(1). But noncitizens from TPS-designated countries are not automatically entitled to TPS benefits; instead, they must submit a registration application for processing and approval. 8 U.S.C. § 1254a(c)(1)(A); *see also* 8 C.F.R. § 244.6.

A noncitizen's TPS application must establish three basic criteria for eligibility: (1) he must have "been continuously physically present in the United States since the effective date of the most recent designation" of the foreign country; (2) he must have "continuously resided in the United States since such date as the [Secretary] may designate;" and (3) he must be "admissible as an immigrant" and "not ineligible for temporary protected status" based on his criminal history or other delineated conduct (e.g., terrorist activity or religious persecution of others). 8 U.S.C. § 1254a(c)(1)(A); *see also* 8 C.F.R. § 244.2. Congress made certain exceptions to the admissibility requirement, including for individuals who are inadmissible because they lack a valid entry document. *See* 8 U.S.C. § 1254a(c)(2)(A)(i) (incorporating provisions of 8 U.S.C. §§ 1872(a)(5) and (7)(A)); *see also* 8 C.F.R. § 244.3.

The statute also provides for temporary benefits while a TPS application is pending, but only after the noncitizen "establishes a prima facie case of eligibility." 8 U.S.C. § 1254a(a)(4)(B); *see also* 8 C.F.R. § 244.5(b). This prima facie eligibility requirement distinguishes the TPS program from other immigration programs where the mere filing of a benefits application is in itself sufficient to trigger temporary benefits. *Compare* 8 U.S.C. § 1154(a)(1)(D) (granting employment authorizations to noncitizens who "filed a petition") *with* 8 U.S.C. § 1254a(a)(4)(B) (making temporary benefits for TPS applicants available only once the noncitizen "establishes a prima facie case of eligibility").

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

Over 30 years ago, during the public notice-and-comment proceedings concerning these regulations, regulators considered and expressly rejected commenters' suggestion "that temporary treatment benefits should be issued immediately upon the completion of an application which, on its face, establishes the alien's eligibility." 56 Fed. Reg. 23491-02, at 23493 (May 22, 1991). Instead, regulators concluded immigration officials needed to determine an applicant's prima facie eligibility because such officials "must be able to make use of evidence that effectively rebuts the alien's claim to eligibility" before awarding temporary benefits. *Id.*

To establish prima facie eligibility, a TPS applicant must file "a completed application … containing factual information that if unrebutted will establish a claim of eligibility." 8 C.F.R. § 244.1. Here, Petitioner still needs to establish his prima facie eligibility, meaning that USCIS must make a prima facie determination based on a review of his application. 8 U.S.C. § 1254a(a)(4)(B). The mere filing of his TPS application does not trigger temporary TPS benefits. This is the exact theory regulators rejected decades ago, and Petitioner cites no case where a court has held a TPS applicant was entitled to any protections before establishing prima facie eligibility. *Cf. Osman v. Schmidt*, No. 25-cv-286, 2025 WL 870048, at *2 (E.D. Wis. Mar. 20, 2025) at *2 ("[Petitioner's] argument seems to be that he is entitled to release in the interim—i.e., before USCIS makes a prima facie determination of his TPS eligibility. But that outcome is not supported by the text of the statute or implementing regulations, which afford applicants relief only after the applicant is found prima facie eligible.").

Here, Petitioner alleges that he filed for TPS on December 9, 2025. Pet., ¶ 63. He claims to be prima facie eligible for TPS and relies on Notice of Intent to Take Case Off of the Court's Calendar, dated September 20, 2023, as support. *Id.*; Dkt. No. 3, at ECF 30-31. But this notice cannot be relied on for a subsequent prima facie determination on Petitioner's December 2025 application. The 2023 notice could not have taken into account subsequent events, such as

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

Petitioner's recent exit and reentry into the United States. His TPS application is pending with USCIS and USCIS will adjudicate the application.

Furthermore, the decades-old internal agency guidance Petitioner cites does not overrule the statutory and regulatory framework to compel a different result. He cites a 2002 internal memorandum for Immigration and Naturalization Service ("INS"), the agency that predated ICE. Pet., ¶ 68; Dkt. 2, at 8-9. This document is not binding law. *See Christensen v. Harris Cnty.*, 529 U.S. 576, 587 (2000) (noting "policy statements, agency manuals, and enforcement guidelines … lack the force of law"). For such a document to have the force and effect of law, it must prescribe substantive rules, i.e., be legislative in nature, and it must conform to procedural requirements imposed by Congress. *Moore v. Apfel*, 216 F.3d 864, 868 (9th Cir. 2000).[5] By contrast, the INS document is merely a memorandum distributed to INS lawyers and does not purport to be "legislative in nature." *See Moore*, 216 F.3d at 868.

Unless and until USCIS determines prima facie eligibility, Petitioner's TPS application affords him no protections.

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

Due process did not require a pre-deprivation hearing before Petitioner's June 2025 arrest and subsequent re-detention. "Due process is flexible and calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). *Mathews* calls for an analysis of (1) "the private interest that will be affected by the official action," (2) "the risk

[5] *But see Church of Scientology of Cal. v. United States*, 920 F.2d 1481, 1487 (9th Cir. 1990) (noting "an administrative agency is required to adhere to its own internal operating procedures" and analyzing, in this framework, an IRS policy statement in the Policies of the IRS Handbook). However, this 2002 INS memo should not quality as an ICE "operating procedure."

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards," and (3) the Government's interest. *Id.*, at 334-35. As described below, the facts in this situation do not support a blanket requirement of a hearing prior to Petitioner's detention.

As to the first *Mathews* factor, Federal Respondents recognize the "weighty liberty interests implicated by the Government's detention of noncitizens." *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y. Aug. 20, 2021). But while many courts have recognized that noncitizens released from immigration detention have a protected liberty interest in remaining out of custody, the weight of that liberty must be considered in the broader picture of the immigration system, which has long acknowledged that an alien has a lesser liberty interest than a citizen. After all, "[t]he recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has 'firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.'" *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court has explained, "[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523. Thus, Federal Respondents acknowledge that Petitioner had some liberty interest in his continued freedom from detention while on bond. However, that liberty interest was conditional.

Turning to the second *Mathews* factor, the risk of a constitutionally significant and erroneous deprivation of Petitioner's liberty did not necessitate a pre-deprivation hearing. The Supreme Court has held that "the Constitution requires some kind of hearing *before* the State

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in the original). But in the same opinion, the Court also recognized that a pre-deprivation hearing is not appropriate in every situation. *Id.*, at 128 (noting there may be "special case[s]" where a pre-deprivation hearing is impracticable). Petitioner's re-detention qualifies as a special case because he left and then reentered the United States. His arrest was not triggered by DHS; Petitioner's own actions triggered his border encounter and qualify for material changed circumstances. If any process is due to reduce the risk of erroneous deprivation here, it should be a post deprivation process. *Martinez Hernandez v. Andrews*, No. 1:25-cv-01035, 2025 WL 2495767, at *11-12 (E.D. Cal. Aug. 28, 2025)

Regarding the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews* test and procedural safeguards "must account for the heightened government interest in the immigration detention context." *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court's 2003 *Demore* decision, the Ninth Circuit in *Rodriguez Diaz* recognized that "the government clearly has a strong interest in preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). "This is especially true when it comes to determining whether removable aliens must be released on bond during the pendency of removal proceedings." *Rodriguez Diaz*, 53 F.4th at 1208. The government likewise has an interest in protecting immigration proceedings from unnecessary delay, especially considering Congress's purpose for enacting Section 1225(b)(1).

Accordingly, the *Mathews* factors do not support Petitioner's claim that due process required a pre-deprivation here.

D. Petitioner's detention comports with due process.

Petitioner incorrectly asserts that his prolonged detention "is contrary to due process." Pet., ¶ 76. "[D]etention necessarily serves the purpose of preventing deportable [] aliens from fleeing

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

prior to or during their removal proceedings, thus increasing the chance that if ordered removed, the aliens will be successfully removed." *Demore v. Kim*, 538 U.S. 510, 528 (2003). The Supreme Court has long held that deportation proceedings "would be in vain if those accused could not be held in custody pending the inquiry" of their immigration status. *Wong Wing v. United States*, 163 U.S. 228, 235 (1896). An immigration judge has ordered Petitioner removed. Petitioner is not entitled to release because he has not demonstrated that his detention is unconstitutionally indefinite as defined in *Zadvydas v. Davis*, 533 U.S. 678 (2001). *Hong v. Mayorkas*, No. 2:20-cv-1784, 2021 WL 8016749, at *6 (W.D. Wash. June 8, 2021), *report and recommendation adopted*, 2022 WL 1078627 (W.D. Wash. Apr. 11, 2022).

Nor is Petitioner entitled to a court-ordered bond hearing. Courts in this District analyze prolonged detention using the *Banda* multi-factor test. *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1117-118 (W.D. Wash. 2019). Federal Respondents acknowledge that Petitioner's approximately seven-month detention has become prolonged. *Id.* However, the *Banda* factors and application of those factors demonstrates that Petitioner's detention has not become constitutionally unreasonable.

In *Banda*, the district court found that the petitioner's 17-month immigration detention pursuant to 8 U.S.C. § 1225(b) had become unreasonable. *Id.*, at 1117-121. To conduct this analysis, the court analyzed six factors: (1) length of detention; (2) how long detention is likely to continue absent judicial intervention; (3) conditions of detention; (4) the nature and extent of any delays in the removal caused by the petitioner; (5) the nature and extent of any delays caused by the government; and (6) the likelihood that the final proceedings will culminate in a final order of removal. *See id.* Analysis of these factors demonstrates that Petitioner's detention, while prolonged, has not become unreasonable.

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

The first *Banda* factor looks at the length of the petitioner's immigration detention. Petitioner has been detained since June 21, 2025. Federal Respondents acknowledge that Petitioner's approximately seven-month detention has recently crossed the prolonged detention mark. At most, this factor should be neutral.

The second *Banda* factor assesses the length of future detention. Petitioner has appealed his removal order to the BIA. It is unclear how long the appeal may be pending or its outcome. Any estimate of future detention would be speculative, at best. Thus, this Court should find this factor to be neutral.

As for the third *Banda* factor – conditions of detention, Petitioner is detained at the Northwest ICE Processing Center.

The fourth and fifth *Banda* factors assess delays caused by the petitioner and the government. There is no evidence of delay on either side. Thus, these factors should be neutral.

The last *Banda* factor weighs the likelihood that removal proceedings will result in a final order of removal. This factor should favor Federal Respondents as an immigration judge has ordered Petitioner removed and denied all forms of relief.

In total, the *Banda* factor analysis demonstrates that most factors are neutral or favor Federal Respondents. Thus, Petitioner has not demonstrated that his detention has become unconstitutionally unreasonable.

V. CONCLUSION

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

//

//

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

DATED this 30th day of January, 2026.

Respectfully submitted,

CHARLES NEIL FLOYD
United States Attorney

s/ Michelle R. Lambert
MICHELLE R. LAMBERT, NYS #4666657
Assistant United States Attorney
United States Attorney's Office
Western District of Washington
1201 Pacific Ave., Ste. 700
Tacoma, WA 98402
Phone: (253) 428-3824
Fax: (253) 428-3826
Email: michelle.lambert@usdoj.gov

Attorneys for Federal Respondents

I certify that this memorandum contains 3,549 words, in compliance with the Local Civil Rules.