

Chief Magistrate Judge Theresa L. Fricke

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

MOHIT JOSHI,

Petitioner,

v.

LAURA HERMOSILLO¹, *et al.*,

Respondents.

Case No. 2:26-cv-00148-TLF

FEDERAL RESPONDENTS'²
RETURN MEMORANDUM

Noted for Consideration:
February 4, 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. Petitioner fails to demonstrate that the length or circumstances of his detention—while prolonged—have become

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 constitutionally unreasonable under the multi-factor *Banda* analysis applied by courts in this
2 District. Accordingly, the Petition should be denied in its entirety.

3 II. FACTUAL AND PROCEDURAL BACKGROUND

4 A. 8 U.S.C. § 1225(b)

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

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

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

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

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

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

6 **C. Petitioner Mohit Joshi**

7 Petitioner is a native and citizen of India who entered the United States at or near San
8 Ysidro, California, on or about October 20, 2024, without being paroled or inspected. Declaration
9 of Deportation Officer Anthony Rosa (“Rosa Decl.”) ¶ 3. The Petitioner was encountered by the
10 United States Customs and Border Patrol (“CBP”) on or around October 20, 2024, and transferred
11 to a nearby CBP facility in the San Diego CBP sector for processing. *Id.* ¶ 4.

12 On October 20, 2024, CBP determined Petitioner was subject to expedited removal, per
13 the June 3, 2024 Presidential Proclamation. *Id.* ¶ 5. The Petitioner was served with this order on
14 October 21, 2024. *Id.* The Petitioner was moved to the Adams Correctional Center in Natchez,
15 Mississippi, on October 30, 2024. *Id.* ¶ 7. On November 9, 2024, the Petitioner was served a
16 credible fear interview information sheet. *Id.* ¶ 8. The Petitioner claimed fear on November 19,
17 2024. *Id.* That same day ERO sent a referral to United States Citizenship and Immigration
18 Services (“USCIS”). *Id.* As of the date of this filing, United States Citizenship and Immigration
19 Services has not conducted a credible fear interview with Petitioner. *Id.*

20 On November 11, 2024, the Petitioner was transferred to the Florence Service Processing
21 Center in Florence, Arizona. *Id.* ¶ 9. On November 12, 2024, the Petitioner was transferred to the
22 NWIPC in Tacoma, Washington. *Id.* ¶ 10. The petitioner is being held under the Immigration and
23 Nationality Act (“INA”) section (“§”) 235. *Id.*

1 On February 12, 2025, DHS issued a Notice to Appear (“NTA”) alleging, in part, that
2 Petitioner was removable from the United States pursuant to INA § 212(a)(6)(A)(i) in that he
3 entered the United States without being admitted or paroled and INA § 212(a)(7)(A)(i)(I) in that
4 he was not in possession of a valid unexpired visa, reentry permit, border crossing card, or other
5 valid entry document, and a valid unexpired passport, or other suitable travel document, or
6 document of identity and nationality as required. *Id.* ¶ 11; Declaration of Alixandria K. Morris
7 (“Morris Decl.”), Exs. 1-2 (NTA; I-213). On that same date Petitioner was placed in immigration
8 court proceedings in Tacoma, Washington. Rosa Decl. ¶ 11.

9 The Petitioner obtained counsel on April 25, 2025, for the immigration proceedings. *Id.* ¶
10 12. The Petitioner had a merits hearing on July 21, 2025, represented by counsel. *Id.* ¶ 13. Counsel
11 asked for a continuance which the immigration judge (“IJ”) granted in Tacoma, Washington. *Id.*

12 The Petitioner had a merits hearing on September 10, 2025, represented by counsel. *Id.* ¶
13 14. Petitioner’s counsel again asked for a continuance so forms of relief could be filed with
14 USCIS. *Id.* The IJ granted the continuance in Tacoma, Washington. *Id.* As of this date, nothing
15 has been filed with USCIS. *Id.* The Petitioner had a merits hearing on October 9, 2025,
16 represented by counsel. *Id.* ¶ 15. During the hearing, Petitioner’s counsel’s camera stopped
17 working and the case was continued again by an IJ in Tacoma, Washington. *Id.*

18 The Petitioner had a merits hearing scheduled for December 18, 2025. *Id.* ¶ 16. An IJ
19 continued the case due to not having enough time to complete the hearing. *Id.* The Petitioner had
20 a Bond Hearing on January 7, 2026, represented by counsel. *Id.* ¶ 17. The IJ found no jurisdiction
21 and did not grant an alternative order from Tacoma, Washington. *Id.* The Petitioner reserved
22 appeal which is due on February 6, 2026. *Id.* As of the date of this declaration, no appeal has been
23 filed with the Board of Immigration Appeals. *Id.*

1 The Petitioner had a merits hearing on January 28, 2026, represented by counsel. *Id.* ¶ 18.
2 An IJ granted Petitioner's counsel's request for a continuance again in Tacoma, Washington. *Id.*
3 The Petitioner's next merits hearing has not yet been scheduled by the Executive Office for
4 Immigration Review in Tacoma, Washington as of the date of this filing. *Id.* ¶ 19.

5 III. LEGAL STANDARD

6 It is axiomatic that "[t]he district courts of the United States . . . are courts of limited
7 jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil*
8 *Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he
9 scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present
10 day." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). . Title 28 U.S.C.
11 § 2241 provides district courts with jurisdiction to hear federal habeas petitions.

12 To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or
13 her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C.
14 § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

15 IV. ARGUMENT

16 Petitioner's continued detention without a court-ordered bond hearing is constitutional.
17 Petitioner has not shown that he is in immigration custody in violation of the Constitution, law,
18 or treaties of the United States. 28 U.S.C. § 2241. ICE lawfully detains him pursuant to 8 U.S.C.
19 § 1225(b), which mandates detention. Individuals detained under Section 1225(b), including
20 Petitioner, are not entitled to an individualized bond hearing based solely on the passage of time.

21 The Supreme Court has considered whether 8 U.S.C. § 1225(b) imposes a time-limit on
22 the length of detention and whether such aliens detained under this statutory authority have a
23 statutory right to a bond hearing. *See Jennings*, 583 U.S. at 297-303. The Court rejected both
24 arguments, holding that Section 1225(b) mandates detention during the pendency of removal

1 proceedings and provides no entitlement to a bond hearing. *See id.*, at 303 (“Nothing in the
2 statutory text imposes any limit on the length of detention.”). While *Jennings* forecloses any
3 statutory or categorical constitutional right to a bond hearing under Section 1225(b), it did not
4 reach the issue of whether prolonged detention without such a hearing could, in individual cases,
5 raise a due process concern.

6 Petitioner’s continued detention without a court-ordered bond hearing does not violate his
7 Fifth Amendment due process rights. Courts in this District analyze prolonged detention using
8 the *Banda* multi-factor test. *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1117-118 (W.D.
9 Wash. 2019). Federal Respondents acknowledge that Petitioner’s approximately fourteen-month
10 detention has become prolonged. *Id.* However, the *Banda* factors and application of those factors
11 demonstrates that Petitioner’s detention has not become constitutionally unreasonable.

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

20 The first *Banda* factor looks at the length of the petitioner’s immigration detention.
21 Petitioner has been detained since October 20, 2024. Federal Respondents acknowledge that
22 Petitioner’s approximately fourteen-month detention is prolonged. Therefore, this factor should
23 favor Petitioner.

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

6 As for the third *Banda* factor – conditions of detention, Petitioner is detained at the
7 NWIPC. Petitioner presents no evidence regarding his conditions of detention. Therefore, this
8 factor should be neutral or weigh in favor of Federal Respondents.

9 The fourth *Banda* factor assesses delays caused by the petitioner. Here, there is evidence
10 that Petitioner has intentionally caused delay, this factor favors Federal Respondents. Petitioner
11 by and through counsel has requested continuances on at least five separate occasions. While
12 there have been minimal delays on the part of the government—one extended hearing by an
13 immigration judge because he did not have time—there is no evidence the government has not
14 intentionally caused any delay. Thus, the fifth *Banda* factor favors Federal Respondents.

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

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

22 V. CONCLUSION

23 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
24 the Petition.

1 Dated this 30th day of January, 2026.

2 Respectfully submitted,

3 CHARLES NEIL FLOYD
4 United States Attorney

s/ Alixandria K. Morris

5 ALIXANDRIA K. MORRIS, TX No. 24095373
6 Assistant United States Attorney
7 United States Attorney's Office
8 Western District of Washington
9 700 Stewart Street, Suite 5220
10 Seattle, Washington 98101
11 Phone: 206-553-7970
12 Fax: 206-553-4067
13 Email: alixandria.morris@usdoj.gov

Attorneys for Federal Respondents

11 I certify that this memorandum contains 1,954
12 words, in compliance with the Local Civil Rules.