

DALJIT GHUMAN
GHUMAN LAW GROUP
2450 VENTURE OAKS WAY STE 225,
SACRAMENTO, CA
PHN (228) 200 0001
dolce@ghumanlawgroup.com
Attorneys for Petitioner

Kelly Vomacka (WSB#20090)
GIBBS HOUSTON PAUW 1000
2nd Ave #1600 Seattle,
WA 98104 (206)682-1080
Kelly.Vomacka@ghp-law.net

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

MOHIT JOSHI,
Petitioner,

v.

HEMOSILLO, et al.,
Respondents.

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

PETITIONER'S TRAVERSE
Date Filed: February 4, 2026

Petitioner submits the following reply to the Respondents' opposition to the Petition in this case. Petitioner submits that the record overwhelmingly shows that the 'prolonged' detention in this case, in the absence of a bond hearing, violates due process. The parties are in agreement, that the appropriate test to employ to determine if Petitioner's continued detention violates due process was laid out in *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1117-118 (W.D. Wash. 2019). ECF No. 7 at 6. However,

Petitioner submits that the record shows the factors to strongly weigh in his favor and therefore that the Petitioner should be granted.

I. The Banda factors:

1. **Length of detention:** The parties are in agreement that Petitioner's 14 month detention, to date, is 'prolonged' and that this factor favors Petitioner. *See* ECF No. 7 at 6
2. **Likely Length of future detention:** Here, the parties disagree. Respondents argue "Petitioner's removal proceedings will be stayed pending USCIS's adjudication of his asylum application." ECF. No 7 at 7 [citing "Hubbard Dec. ¶ 15."] The thing is, *there is no "Hubbard Decl." in this case.* Further, there is no evidence that Petitioner's removal proceedings are "stayed" or that he has an asylum application pending before USCIS. It appears this argument was meant for the case of a different asylum seeker.

However, what the record in this case does show is that there is significant probability of lengthy detention without bond hearing absent relief from this Court. First, the record shows that Petitioner's case is not currently scheduled for a hearing before the immigration court. Exhibit A. The last scheduled hearing, as discussed *infra* at factors 4/5, was held but the judge rescheduled due to competency concerns and agreement with Petitioner's counsel that some 'safeguards' are required to conduct a fair hearing. *See* Ghuman Decl at ¶ 3 (Feb 4, 2026). As of now, the record is clear that removal is not imminent and that detention therefore is likely to persist for an indeterminate and, likely lengthy, period.

Even if a negative decision is issued at some indeterminate point in the future, Petitioner has expressed his intention to appeal and will remain detained during that process. Conversely, if the judge grants Petitioner's claim for asylum or other protection, DHS could still appeal that decision to the BIA. The filing of the appeal would mean, as a matter of law, the immigration judge's decision is not final and there is no final order of removal in Petitioner's case. 8 C.F.R. § 1003.6(a) ("If a party appeals an immigration judge's decision on the merits of the case (not including bond and custody determinations) to the BIA during the appeal period, the order of removal is automatically stayed during the BIA's adjudication of the appeal."). While Respondents would best be

1 able to provide current information concerning appeal processing times, they have elected
2 to not weigh in on this issue.

3 Counsel can confirm that in her experience, that Bond appeals before the BIA, on
4 average, take six months to complete. *See also Vazquez v. Bostock*, 779 F. Supp. 3d 1239,
5 1245 (W.D. Wash. 2025) (Dk 55-1 contains a spreadsheet released by EOIR through
6 FOIA); *Lopez-Campos v. Raycraft*, 797 F.Supp.3d 771, 779 (E.D.Mich., 2025). Counsel
7 can also confirm from her experience that appeals on the merits for detained cases are
8 routinely taking over six months and many merit appeals in non-detained cases remain
9 pending for 3-6 years. These backlogs and likely growing nature of delays have been
10 noted by Federal Courts. "[I]t is common (judicial) knowledge these days that the BIA is
11 presently drinking from a veritable firehose of hundreds of thousands of cases on appeal.
12 *Leal-Hernandez v. Noem*, 2025 WL 2430025, at *11 (D.Md., 2025).

13 If Petitioner's appeal is denied at the Board of Immigration Appeals, he would still
14 have statutory right to seek review from the Ninth Circuit Court of Appeals through filing
15 of a petition for review. Obtaining decision on a Petition for Review from the Ninth
16 Circuit Court of Appeals takes months or longer. Petitioner's future detention is likely to
17 last many more months, if not years, if he is not released at a bond hearing. *Banda*, 385 F.
18 Supp. 3d at 1119 (finding that in 2019 an appeal to the BIA and subsequent judicial
19 review "may take up to two years or longer").

20 Petitioner submits that, based on the fact that he is not even scheduled for a final
21 hearing date, standing alone, the Court should find this factor weighs in his favor. If the
22 Court considers likely time to process an appeal, which Petitioner argue is appropriate,
23 given record evidence of intent to appeal, Ghuman Decl at ¶ 4, the inescapable
24 conclusion is that Petitioner future detention is likely to be extremely lengthy. *But see e.g.*
25 *Maliwat v. Scott*, No. 2:25-cv-00788-TMC, 2025 U.S. Dist. LEXIS 152663, at *13 (W.D.
26 Wash. Aug. 7, 2025)(declining to consider length of appeal where appeal was not yet
27 pending).

28 Whether the Court considers the likely length of appeal, Petitioner submits that
this factor weighs in his favor.

3. The Conditions of Detention:

In *Banda*, 385 F. Supp. 3d at 1119, the court explained that "[t]he more that the conditions under which the [noncitizen] is being held resemble penal confinement, the stronger his argument that he is entitled to a bond hearing." *Id.* Here the record shows that the conditions are akin or worse than penal confinement.

Respondents suggest that the record in this case is silent as to conditions of confinement. First, this is inaccurate as Petitioner has submitted records and verified allegations showing he was assaulted by fellow detainees, that a guard responding was slow to intervene, that other detainees broke up the fight. ECF. No Further, to the extent the record was lacking in evidence, Petitioner submits additional evidence now. Exhibit 1 (Letter from Congresspersons outlining documented concerns over sanitation, healthcare, food, access to counsel, and numerous safety concerns, as well as concerns over disciplinary procedures and other serious issues. The letter, dated December 16, 2025, cites to a plethora of news reports and studies documenting conditions at NWIPC and asks DHS-ICE to reply to numerous questions by January 16, 2026-it is unclear to counsel if a response has been issued by ICE as of filing). Meanwhile, Respondents have elected not to submit any evidence relating to the conditions at NWIPC.

Further, Petitioner asks the Court to take note of the evidence and findings noted, based on record evidence, in *Maliwat v. Scott*, No. 2:25-cv-00788-TMC, 2025 U.S. Dist. LEXIS 152663, at *14-15 (W.D. Wash. Aug. 7, 2025) ("[Petitioner] explains that, in his confinement at NWIPC, there has been very minimal staffing. *Id.* Further, "meals are irregular and nutritionally lacking." *Id.* Dinner is sometimes not served until after 10 p.m. *Id.* To supplement the deficient meals, he "must purchase food at the commissary," where prices "appear to be marked up and are expensive." *Id.* "On multiple occasions," Maliwat has "observed that the drinking water appears brown or yellow in color." *Id.* He has observed several violent incidents, which have been uncontrolled by guards. *Id.* at 21-22. Respondents have not contested Maliwat's description of the conditions at NWIPC.") *See also Doe v. Bostock*, No. C24-0326-JLR-SKV, 2024 U.S. Dist. LEXIS 102019, at *32 (W.D. Wash. Mar. 29, 2024) ("This Court has, upon consideration of evidence provided

1 by the parties, found the conditions at NWIPC, "similar . . . to those in many prisons and
 2 jails."); *Anisur Rahman v. Garland*, No. 2:24-cv-02132-JHC-TLF, 2025 U.S. Dist.
 3 LEXIS 133500, at *10 (W.D. Wash. June 26, 2025)("Petitioner contends that the
 4 conditions at the NWIPC are similar to penal confinement, citing to a newspaper article
 5 from the Tacoma News Tribune discussing the facility's issues with "under-staffing,
 6 limits to outdoor recreation for detainees, and renewed stoppage of funding for a legal-aid
 7 information program for people facing deportation." Dkt. 20-1, Declaration of Kelly
 8 Vomacka, at 79-83. The article raises concerns about the facility's lack of compliance
 9 with medical and sanitary condition requirements. *Id.* Petitioner also cites to the ICE
 10 Detainee Handbook. *Id.* at 5-78. The ICE Detainee Handbook discusses disciplinary
 11 procedures, use of force and restraints, searches, restrictions on privacy, and limited
 12 recreation time. *Id.* at 12, 15, 21, 27. The Court has, upon consideration of evidence
 13 provided by the parties, found the conditions at NWIPC, "similar ... to those in many
 14 prisons and jails[.]"

15 The record in this case, together with recent findings from Court's considering
 16 conditions of confinement at NWIPC, demonstrates that conditions of confinement
 17 mirror or are worse than those found at prisons or jails and thus that this factor should
 18 weigh in Petitioner's favor.

19 **(4) delays in the removal proceedings caused by the detainee; (5) delays in the**
 20 **removal proceedings caused by the government;**

21 Courts often review these two factors together with the following principles in mind:
 22 "Petitioner is entitled to raise legitimate defenses to removal ... and such challenges to his
 23 removal cannot undermine his claim that detention has become unreasonable." *Martinez*
 24 *v. Clark*, No. 18-1669, 2019 U.S. Dist. LEXIS 197895, 2019 WL 5968089, at *10 (W.D.
 25 Wash. May 23, 2019), R & R adopted, 2019 U.S. Dist. LEXIS 196836, 2019 WL
 26 5962685 (W.D. Wash. Nov. 13, 2019) (citations and internal quotation marks omitted).
 27 Yet Courts should be sensitive to the possibility that dilatory tactics by the removable
 28 noncitizen may serve not only to put off the final day of deportation, but also to compel a

determination that the noncitizen must be released because of the length of his incarceration. With respect to the Government, if immigration officials have caused delay, it weighs in favor of finding continued detention unreasonable.... Continued detention will also appear more unreasonable when the delay in the proceedings was caused by the immigration court or other non-ICE government officials.” *Belqasim v. Bostock*, No. 2:25-cv-01282, 2025 U.S. Dist. LEXIS 224772, at *24-25 (W.D. Wash. Oct. 28, 2025)(citations and internal quotation marks omitted).

Respondents have submitted, relying largely on the Declaration of Anthony Rosa, a Deportation Officer with ICE, that this factor weighs in Respondents’ favor.¹ ECF. NO 7 at 4, 9; ECF No. 8. But a look at the record in a more nuanced fashion reveals a far different story than that painted by Officer Rosa. First, Petitioner was initially detained on October 20, 2024. ECF 8 at ¶4.² Petitioner was then transferred to Florence, Arizona and then the next day to NWIPC. Id ¶¶ 9-10. Then, on January 15,

¹ Officer Rosa claims to have “personal knowledge, obtained from various records and systems maintained by ICE...including but not limited to the alien registration file, DHS databases, and notes from the previous and current officers in charge of the case relating to Petitioner.” Simply put, Officer Rosa has no direct knowledge of Petitioner’s removal proceedings, is not an attorney or familiar with immigration court procedures, and, as it relates to his opinion as to why the removal case or a particular date was continued, his only source of knowledge is reference to databases and ‘notes.’ Officer Rosa does not claim to have reviewed the filings in Petitioner’s immigration court record, listened to the Digital Audio Records (DAR) of the various hearings or otherwise have first hand knowledge of the proceedings. Rather, it seems that Officer Rosa is simply relating what he found in stray notes in DHS databases. Strangely, nowhere in the notes that Officer Rosa reviewed is there mention of Petitioner having mental health issues, that those issues relate to his being assaulted in Respondents’ custody, that Petitioner’s counsel sought continuance due to these medical and mental health issues, that prior counsel withdrew representation partly due to lack of ability to access and communicate with Petitioner. See ECF 1-1 at ¶¶ 8-9.

² The facts listed here are based on counsel’s review of the digital audio recordings, cases notes, and records of proceedings in immigration court unless specifically noted otherwise. See *Ghuman Decl.* ¶ 5 (Feb.4 , 2026)/

1 2025, A notice to appear was issued.³ That Notice to Appear was not filed to the Court
2 until January 23, 2025. ECF. NO. 1-1 at Exh. 1. **Thus, it was 93 days from initial**
3 **detention until Respondents took any action in this case.**

4 Petitioner's first attorney entered his appearance on April 25, 2025. Petitioner's
5 application for asylum was filed with the Court on June 9, 2025. Prior counsel withdrew
6 from the case. See ECF 1-1 at ¶¶ 8-9. Then, as noted by On July 10, 2025, Petitioner was
7 assaulted in custody. ECF NO. 1-1 at Exh. 6. Thereafter, Petitioner reported worsening
8 mental health issues including depression, headaches, sleeplessness, thoughts of suicide
9 and other issues. ECF No. 1-1 at Exh. 7. Current counsel came into the case in August of
10 2025. ECF 1-1 ¶ 8. Continuances from July to September, to October 9, 2-25 ensued.
11 Petitioner disagrees with the characterization of the various continuances as stated in the
12 "Rosa Declaration." For example, ¶14 of the declaration indicates that Petitioner's
13 counsel requested a continuance of the September 10, 2025 hearing "so forms of relief
14 could be filed with USCIS." The forms of relief this refers to is a application for U-
15 nonimmigrant status. BIA precedent is clear that continuance is not generally warranted
16 for the purposes of filing for or waiting for the lengthy adjudication of a U-nonimmigrant
17 petition where the outcome is uncertain and does directly bear on removal proceedings.
18 *Matter of L-YN-*, 27 I&N Dec. 755 (BIA 2020). Thus, either the judge granted a
19 continuance contrary to precedent, or something else additionally or entirely happened on
20 that date.

21 It is undoubtedly correct to say that Petitioner has also requested time to prepare in
22 his case. Indeed, Petitioner has had difficulty gathering evidence, communicating with
23 counsel, and delays were caused because of withdrawal of prior counsel. However, the
24 conditions making preparation difficult, including the conditions that led to Petitioner's
25 assault, were controlled by Respondents. Further, as correctly noted, the continuance
26 from December 18, 2025 to January 28, 2026 was required due to the judge having

27
28 ³ The Rosa Decl indicates the Notice to Appear was issued on 2/12/2025. This is
inaccurate. See ECF 9-1 at p.2.

1 insufficient time to complete all cases on the calendar. Finally, the continuance from
2 January 28, 2026, to some indeterminate date was due to the newly assigned judge
3 finding Petitioner unfit to proceed with trial and due to competency concerns. Counsel
4 agreed that continuance was justified but did not have control over the outcome or when
5 a new date set. It also worth noting that at least 3 different immigration judges have been
6 assigned to the case over the last 15 months, undoubtedly contributing to the need for
7 further continuances.

8 In sum, at worst for Petitioner, these two factors appear to be neutral or to cancel
9 each other out. Petitioner, though, submits that given that there were 3 months where
10 absolutely nothing happened in his case, that his case has been reassigned to multiple
11 judges over the last several months, that he was assaulted in custody, is suffering mental
12 health and medical issues stemming from that assault, has to deal with penal like
13 conditions of confinement including conditions where access to counsel is extremely
14 difficult, that these factors should both be weighed in his favor.

15 **6. The likelihood of removal proceedings resulting in final order of removal**

16 It may be early to assess this factor in this case. However, DHS has submitted
17 prehearing statement to the Immigration Judge indicating that Petitioner presented
18 evidence to establish *prima facie* eligibility for withholding of removal, 1231(b)(3)(the
19 "Attorney General may not remove an alien to a country if the Attorney General decides
20 that the alien's life or freedom would be threatened in that country because of the alien's
21 race, religion, nationality, membership in a particular social group, or political opinion."
22 and for relief under the United Nations Convention Against Torture.

23 "[W]here a noncitizen has asserted a good faith challenge to removal, 'the categorical
24 nature of the detention will become increasingly unreasonable.'" *Scott v. Wamsley*, No.
25 2:25-cv-1819, 2025 U.S. Dist. LEXIS 253288, at *27 (W.D. Wash. Dec. 8, 2025)(quoting
26 *Martinez v. Clark*, No. C18-1669-RAJ-MAT, 2019 LX 57468 (W.D. Wash. May 23,
27 2019). If anything then, this factor leans slightly in favor of Petitioner.

28 In Sum:

Factors 1 (length of detention), 2 (likely length future detention), 3 (conditions of

1 confinement) all strongly favor Petitioner. Factor four and five (sources of delay in the
2 case), might lean neutral though Petitioner suggests otherwise particularly since delay
3 from his side resulted from conditions of confinement. Factor six slightly favors
4 Petitioner or is neutral.

5 **II. Conclusion**

6 Beyond a mere counting of factors, a review of the record here shows that Petitioner's
7 continued confinement is likely to be prolonged and, most importantly, is serving to
8 undermine the ability to complete the removal proceedings. The lack of safety, access to
9 counsel, ability to receive medical care, and other factors related to confinement, are
10 making it difficult, if not impossible to complete the removal proceedings. Holding a
11 bond hearing and/or releasing Petitioner would impose little or no cost on Respondents
12 and would likely facilitate their goal of bringing these proceedings to a more rapid close.
13 As such, petitioner asks this Court to grant the petition and order Respondent's to grant
14 Petitioner a bond hearing within 7 days of the order.

15 Respectfully submitted this 4th day of February, 2026,

16
17 /s/ Daljit Ghuman
18 DALJIT GHUMAN (PHV)
19 Attorneys for Petitioner

20
21 Kelly Vomacka (WSB#20090)
22 GIBBS HOUSTON PAUW 1000
23 2nd Ave #1600 Seattle,
24 WA 98104 (206)682-1080
25 Kelly.Vomacka@ghp-law.net
26
27
28