

Magistrate Judge Brian A. Tsuchida

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

KAMAL BISTA,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:26-cv-00358-BAT

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted for Consideration:
February 23, 2026.

I. INTRODUCTION

This Court should deny Petitioner's Petition for a Writ of Habeas Corpus. Dkt. 1, (Petition or Pet.). Petitioner, a citizen and national of Nepal, entered the United States unlawfully on January 21, 2025, and is subject to expedited removal pursuant to 8 U.S.C. § 1225(b)(1) and Proclamation No. 10773, 89 Fed. Reg. 48,799 (June 7, 2024). Petitioner's detention is lawful and mandatory under 8 U.S.C. § 1225(b)(1), and his claims of due process violations, violations of the Convention Against Torture (CAT), the Administrative Procedure Act (APA), and unconstitutional third-country removal are without merit.

This Court should deny the relief sought here. Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b).

II. FACTS AND PROCEDURAL BACKGROUND

A. Petitioner Ali Ali-Hassen

Petitioner, a citizen and national of Nepal, was encountered by U.S. Border Patrol agents on January 21, 2025, near the U.S.-Mexico border in Texas. Declaration of Lawrence Van Daley (Van Daley Decl.), Exhibit 1, Form I-213. He admitted to entering the United States illegally during the period of suspension and limitation on entry as described in Proclamation No. 10773, 89 Fed. Reg. 48,799 (June 7, 2024). *Id.* He was taken into custody and transported to the San Diego Central Processing Center for further processing. *Id.*

On January 22, 2025, Petitioner was advised of his right to speak with a consular officer from Nepal, which he understood and declined. *Id.* A credible fear interview was conducted, resulting in a negative determination. Van Daley Decl., Exhibit 3, Credible Fear Determination. Petitioner was served with Form I-860 (Notice and Order of Expedited Removal) and Form I-296 (Notice to Alien Ordered Removed/Departure Verification). *See*, Van Daley Decl., Exhibit 2, Expedited Removal. He is currently detained at the Northwest ICE Processing Center in Tacoma, Washington, pending expedited removal under § 1225(b)(1). *See* Van Daley Decl., Exhibit 1, Form I-213. No evidence available within Petitioner's A file show that any attempts have been made to remove Petitioner to a third country.

B. Detention Authority

The detention of inadmissible aliens pending expedited removal proceedings is governed by 8 U.S.C. § 1225(b)(1), which mandates such detention without a statutory right to periodic bond hearings, as interpreted by the Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018). However, unreasonably prolonged detention under this provision may implicate due process protections under the Fifth Amendment. Courts assess the reasonableness of such detention using a multi-factor test that considers the total length of detention, the likely duration of future

1 detention, conditions of detention, delays caused by the detainee or the government, and the
2 likelihood of removal, as outlined in *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D.
3 Wash. 2019). This approach is consistent with Ninth Circuit guidance expressing concerns about
4 arbitrary prolonged detention without process in *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir.
5 2018), and has been applied in cases requiring bond hearings for extended detentions under 8
6 U.S.C. § 1225(b)(1), such as *Djelassi v. ICE Field Off. Dir.*, 434 F. Supp. 3d 917, 923-24 (W.D.
7 Wash. 2020).

8 1. CAT and Withholding

9 Claims under the Convention Against Torture (CAT) and withholding of removal, 8 U.S.C.
10 § 1231(b)(3)(A) prohibits removal to a country where an individual's life or freedom would be
11 threatened, but this provision applies only after a final order of removal. The implementing
12 regulations, including 8 C.F.R. § 208.16(c), require a showing that torture is more likely than not,
13 and a negative credible fear determination under 8 U.S.C. § 1225(b)(1)(B)(v) already incorporates
14 assessments of persecution or torture risks.

15 2. APA Review

16 Challenges under the Administrative Procedure Act (APA) are governed by 5 U.S.C. §
17 706(2), which permits courts to set aside arbitrary or unlawful agency actions, though immigration
18 detention decisions are typically reviewed through habeas corpus channels pursuant to 8 U.S.C. §
19 1252(b)(9).

20 3. Third-Country Removal

21 For third-country removal, such actions must afford due process, including notice and an
22 opportunity to express fears of harm, but claims challenging hypothetical removals must be ripe
23 for review, meaning they require a concrete injury rather than speculative harm, as explained in
24 *Texas v. United States*, 523 U.S. 296, 300 (1998).

4. Injunctive Relief

Injunctive relief in immigration habeas cases is limited. Lower courts lack authority to issue classwide injunctions under 8 U.S.C. § 1252(f)(1), as held in *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022). Habeas relief under 28 U.S.C. § 2241 is confined to individual remedies addressing present unlawful custody, such as release or a hearing, and does not extend to permanent injunctions against potential future actions, per *Zadvydas v. Davis*, 533 U.S. 678, 692 (2001).

III. LEGAL STANDARD

This Court has jurisdiction to review the legality of immigration detention under 28 U.S.C. § 2241. *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). However, review is "narrow" and deferential, limited to whether detention exceeds statutory authority or violates due process. *Jennings*, 583 U.S. at 301. As-applied constitutional challenges to prolonged detention may arise, but brief detention tied to active proceedings does not. *See Rodriguez Diaz v. Garland*, 55 F.4th 1128, 1136-38 (9th Cir. 2022).

IV. ARGUMENT

A. Petitioner's Detention Does Not Violate Due Process Under the Fifth Amendment

Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(1), which mandates detention for inadmissible aliens pending expedited removal proceedings. *See Jennings v. Rodriguez*, 583 U.S. at 302 (emphasizing that the statute's text requires detention without implying a right to periodic bond hearings). Although 8 U.S.C. § 1225(b)(1) does not statutorily entitle arriving aliens to bond hearings, courts have recognized that unreasonably prolonged detention without such a hearing may implicate due process concerns. *See Rodriguez v. Marin*, 909 F.3d at 256. To determine whether detention has become unreasonably prolonged, courts in this district apply the multi-factor test articulated in *Banda v. McAleenan*, 385 F. Supp. 3d at 1106. This test balances several

1 considerations to ensure detention remains reasonably related to its purpose of facilitating removal.
2 *See Zadvydas v. Davis*, 533 U.S. at 690. Applying these factors here demonstrates that Petitioner's
3 detention, approximately 13 months, remains reasonable and does not offend due process.

4 First, the total length of detention weighs in Respondents' favor. At 13 months, Petitioner's
5 detention exceeds the average for expedited removal cases but falls short of presumptively
6 unconstitutional durations identified in analogous precedents. *See Demore v. Kim*, 538 U.S. 510,
7 531 (2003) (upholding detention averaging six months under § 1226(c) as constitutional). Courts
8 have routinely upheld detentions of similar or longer lengths where removal is foreseeable. *See,*
9 *e.g., Djelassi v. ICE Field Off. Dir.*, 434 F. Supp. 3d at 923-24 (finding 20-month detention under
10 § 1225(b)(1) required a bond hearing, but only after weighing other factors). Here, the length alone
11 does not tip the balance toward unreasonableness, particularly given the expedited nature of the
12 proceedings.

13 Second, the likely duration of future detention supports continued custody. Petitioner's
14 removal to Nepal is feasible and likely, bolstered by the negative credible fear determination and
15 his unlawful entry during a period of border restrictions. *See Van Daley Decl.*, Exhibit 1, Form I-
16 213; Exhibit 2 Form I-860. There is no evidence of indefinite detention, as in cases where
17 diplomatic obstacles prevent repatriation. *Cf. Zadvydas v. Davis*, 533 U.S. at 701.

18 Third, the conditions of detention are civil and non-punitive, aligning with the regulatory
19 purpose of immigration enforcement. Petitioner has not alleged conditions akin to criminal
20 incarceration, such as solitary confinement or inadequate medical care, that might elevate due
21 process concerns. *See Banda v. McAleenan*, 385 F. Supp. 3d at 1110. Absent specific complaints,
22 this factor does not favor release.

23 Fourth and fifth, any delays are not attributable to Respondents. The record shows no
24 government-caused postponements; rather, the process has proceeded expeditiously following the

1 negative credible fear finding. Indeed, Respondent's are requesting a second credible fear finding
2 to ensure the finding encompasses any and all forms of potential relief. Petitioner has not identified
3 actions by Respondents that prolonged his custody, nor has he caused delays through frivolous
4 appeals or non-cooperation. This neutral factor underscores the detention's reasonableness. *See id.*
5 at 1111.

6 Finally, the likelihood of removal is high. Petitioner's negative credible fear determination
7 and service of expedited removal forms confirm his inadmissibility and removability. *See* 8 U.S.C.
8 § 1225(b)(1)(B)(v); Van Daley Decl., Exhibit 2, Form I-860. Nepal routinely accepts repatriations,
9 and no barriers to removal are evident.

10 In supplemental analysis, recent precedents reinforce this conclusion. For instance, in
11 *Djelassi v. ICE Field Off. Dir.*, 434 F. Supp. 3d 917 (W.D. Wash. 2020), the court applied the
12 *Banda* factors to a similar 8 U.S.C. § 1225(b)(1) detainee and granted habeas relief after 20 months,
13 emphasizing the government's interest in expeditious removal. Likewise, post-*Jennings* decisions,
14 such as *Rodriguez v. Marin*, 909 F.3d 252 (9th Cir. 2018), confirm that due process requires only
15 that detention not become arbitrary. Petitioner's detention serves legitimate governmental
16 purposes and does not violate the Fifth Amendment.

17 **B. No Violation of Fifth Amendment, 8 U.S.C. § 1231, CAT, Implementing Regulations,**
18 **or APA**

19 Petitioner's substantive claims for protection, his reliance on 8 U.S.C. § 1231 and the CAT
20 is misplaced, as these provisions do not govern his pre-removal detention. Section 1231 applies
21 only after a final order of removal, regulating post-order detention and withholding. *See Johnson*
22 *v. Guzman Chavez*, 594 U.S. 523, 536 (2021). Petitioner, detained under 8 U.S.C. § 1225(b)(1) for
23 expedited removal, has not reached that stage. Instead, his credible fear interview already assessed
24

1 potential persecution or torture risks, resulting in a negative finding. *See* 8 U.S.C. §
2 1225(b)(1)(B)(v); 8 C.F.R. § 208.30(e).

3 Furthermore, the implementation regulations for CAT, such as 8 C.F.R. § 208.16(c),
4 demand a showing that torture is more likely than not upon removal as the negative credible fear
5 forecloses such relief absent new evidence. Petitioner's Fifth Amendment claim fails similarly, as
6 the negative determination provided adequate process for an arriving alien. *See Shaughnessy v.*
7 *United States ex rel. Mezei*, 345 U.S. 206, 212 (1953).

8 As for the APA, detention decisions under 8 U.S.C. § 1225(b)(1) are discretionary and
9 committed to agency action, precluding judicial review under 5 U.S.C. § 701(a)(2). *See* 8 U.S.C.
10 § 1252(a)(2)(B)(ii) (barring review of discretionary immigration decisions). Even if reviewable,
11 the actions here are neither arbitrary nor contrary to law. *See* 5 U.S.C. § 706(2). Thus, these claims
12 lack merit and provide no basis for habeas relief.

13 **C. Third-Country Banishment Claims Are Not Ripe and Lack Merit**

14 Petitioner's assertions of punitive third-country banishment under the Fifth and Eighth
15 Amendments are premature and unsubstantiated. No known attempts have been made to remove
16 him to a third country, rendering these claims speculative and unripe for adjudication. Ripeness
17 doctrine requires both fitness for judicial review and hardship to the petitioner from withholding
18 consideration. *See Texas v. United States*, 523 U.S. at 300. Here, absent imminent third-country
19 removal, there is no actual controversy.

20 Even if ripe, the claims fail on the merits. Third-country removal is statutorily authorized
21 under 8 U.S.C. § 1231(b)(2), provided the destination offers safety from persecution or torture.
22 Due process mandates notice and an opportunity to express fears, which would be afforded if
23 removal were pursued. Petitioner's Eighth Amendment argument misconstrues civil immigration
24 detention as punishment; it is regulatory and non-punitive. *See Demore v. Kim*, 538 U.S. 510, 531

(2003) (distinguishing immigration detention from criminal sanctions). Similarly, Fifth Amendment concerns arise only from actual deprivations, not anticipated ones. Without evidence of imminent harm or procedural denial, these speculative claims must be dismissed.

D. Prayer for Relief Exceeds Habeas Scope

Petitioner's requested remedies overreach the bounds of habeas jurisdiction. He seeks broad injunctive relief against future redetention or third-country removal, including mandates for hearings with shifted burdens and prohibitions on removal without reopened proceedings. However, 8 U.S.C. § 1252(f)(1) prohibits lower courts from issuing classwide or systemic injunctions restraining immigration enforcement. *See Garland v. Aleman Gonzalez*, 596 U.S. at 550. Habeas relief under 28 U.S.C. § 2241 is narrowly tailored to unlawful custody, permitting release or hearings but not permanent bars on future actions. *See Zadvydas v. Davis*, 533 U.S. at 692.

Redetention under 8 U.S.C. § 1225(b)(1) is mandatory for expedited removal, rendering flight risk or danger assessments irrelevant absent a due process violation warranting a bond hearing. *See Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018). No "changed circumstances" doctrine applies here, as Petitioner was never previously released. Self-departure or reopened proceedings are discretionary remedies unavailable in habeas without a ripe claim. Accordingly, the prayer for relief should be denied .

V. CONCLUSION

For the foregoing reasons, this court should deny the relief sought here.

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1 DATED this 17th day of February, 2026.

2 Respectfully submitted,

3 s/ Lawrence Van Daley

4 LAWRENCE VAN DALEY, WSBA No. 53102

5 Special Assistant United States Attorney

6 United States Attorney's Office

7 Western District of Washington

8 1201 Pacific Ave., Ste. 700

9 Tacoma, WA 98402

10 Phone: 253-428-3825

11 Fax: 253-428-3826

12 Email: lawrence.van.daley@usdoj.gov

13 *Attorney for Federal Respondents*

14 I certify that this memorandum contains 2,077
15 words, in compliance with the Local Civil Rules.