

THE HONORABLE BRIAN A. TSUCHIDA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KAMAL BISTA,

Petitioner,

vs.

PAMELA BONDI, Attorney General of
the United States, et al.,

Respondents.

No. CV26-358-BAT

REPLY TO RESPONDENTS'
RESPONSE TO PETITION FOR WRIT
OF HABEAS CORPUS

I. INTRODUCTION

Kamal Bista, through counsel, submits this reply in support of his petition for a writ of habeas corpus. In his petition, Mr. Bista demonstrated how he has been detained for over a year with no end in sight and that amounts to an improper indefinite detention, entitling him to a writ of habeas corpus. The Government responds first by arguing that Mr. Bista's detention is governed by a different statute, for which relief is less readily available. However, that argument is misplaced and has been considered and rejected by other courts in this district and elsewhere. Nonetheless, Mr. Bista's continued detention is improper and unlawful under either statute. The Government goes on to argue that his detention is not improperly indefinite and, therefore, he is not entitled to relief. However, the undisputed facts specific to his case establish that his detention is indefinite and unlawful, entitling him to relief. Finally, the Government argues that the additional relief requested by Mr. Bista is either inapplicable or unripe. The Government's arguments are misplaced as those remedies are appropriate and

1 necessary to ensure this Court's order is followed. Mr. Bista's detention is clearly
 2 indefinite at this point, and he should be released and protected against being re-
 3 detained or deported to a third country without adequate notice and safeguards.

4 II. ARGUMENT

5 **A. This case is governed by 8 U.S.C. § 1231 as Mr. Bista alleged in his petition, not 8**
 6 **U.S.C. § 1225(b) as the Government argues.**

7 The Government's initial argument against Mr. Bista is that he was detained
 8 under 8 U.S.C. § 1225(b), which has different standards and requirements concerning
 9 detention than are present in 8 U.S.C. § 1231, the statute that forms the basis for most of
 10 these challenges to indefinite detention. Dkt. 8 at 4. However, the Government's
 11 argument is not correct. Courts, including the Ninth Circuit and other courts in this
 12 district, generally have recognized that the division between the two statutes at issue is
 13 one of timing, not of the nature of how the process began. As the Ninth Circuit noted in
 14 a decision issued after the Supreme Court's holding in *Jennings v. Rodriguez*, "[o]nce
 15 an alien has a final removal order that is not subject to a judicial stay, detention
 16 authority shifts [from 8 U.S.C. § 1225(b)(2)] to 8 U.S.C. § 1231(a)." *Diaz v. Garland*,
 17 53 F.4th 1189, 1197 (9th Cir. 2021) (citing *Jennings*, 138 S. Ct. 830, 843 (2018); *Diouf*
 18 *v. Napolitano*, 634 F.3d 1081, 1085 (9th Cir. 2011); 8 U.S.C. § 1231(a)(1)(B));
 19 *Bhandari v. Bondi*, No. C25-2747-KKE, 2026 U.S. Dist. LEXIS 27604, at *9 (W.D.
 20 Wash. Feb. 10, 2026) ("Although Respondents' argument would carry the day if
 21 Bhandari were still an 'applicant for admission' subject to procedures governed by
 22 § 1225(b), because Bhandari is now subject to a final order of removal, § 1231(a)
 23 governs his detention.";¹ *see also Mejia Rivera v. Florentino*, No. 25-18063, 2025 U.S.

24 ¹ Even the Government seems to agree, noting later in its pleading that "Section 1231
 25 applies only after a final order of removal, regulating post-order detention and
 26 withholding." Dkt. 8 at 6. Mr. Bista has a final order of removal which has been in
 place for over a year (in which no efforts have apparently been taken to remove him).
 Dkt. 9-2. Thus, even under the Government's reasoning, 8 U.S.C. § 1231 governs.

1 Dist. LEXIS 267255, at *4–5 (D.N.J. Dec. 30, 2025) (“Petitioner is subject to a final
 2 order of removal. . . . Accordingly, if any detention statute applies to Petitioner, it is the
 3 statute governing post-final orders of removal detention, 8 U.S.C. § 1231(a).”). In fact,
 4 subsequent to *Jennings*, the Supreme Court broke down when each of the subsections
 5 of the INA were applicable to which parts of the process, confirming that, after a
 6 removal order is in place, § 1231 controls:

7 Sections 1226 and 1231 both appear in Part IV of Title 8, chapter 12, of
 8 the United States Code, entitled “Inspection, Apprehension, Examination,
 9 Exclusion, and Removal.” The sections within that part proceed largely in
 10 the sequential steps of the removal process. Sections 1221 to 1224
 11 address the arrival of aliens. Section 1225 provides instructions for
 12 inspecting aliens, expediting the removal of some, and referring others for
 13 a removal hearing. Section 1226 authorizes the arrest and detention of
 14 aliens pending a decision on whether they are to be removed. Section
 15 1227 explains which aliens are deportable. Section 1228 authorizes the
 16 expedited removal of some of those deportable aliens. Sections 1229,
 1229a, and 1229b set out the process for initiating and conducting
 removal proceedings, and they specify the types of relief that an alien can
 request during those proceedings, such as cancellation of removal.
 Section 1229c addresses voluntary departure. Section 1230 explains what
 to do if an alien is admitted. *And §1231 explains what to do if the alien is
 ordered removed.*

17 *Johnson v. Guzman Chavez*, 594 U.S. 523, 543–44 (2021) (emphasis added); *see also*
 18 *id.* at 548 (Thomas, J., concurring) (“Jennings concerned aliens who the Government
 19 had not yet ordered removed.”); *Jennings*, 583 U.S. at 290 (“[W]hile Rodriguez was
 20 still litigating his removal in the Court of Appeals, he filed a habeas petition in the
 21 District Court for the Central District of California”); *id.* at 298 (“*Zadvyd*
 22 *das* concerned § 1231(a)(6), which authorizes the detention of aliens who have already been
 23 ordered removed from the country.”).

24 The Supreme Court’s opinion in *Jennings* explains why its holding should not
 25 apply to a case like this with a final order of removal, noting that detention under
 26 8 U.S.C. § 1225(b) is needed because it “gives immigration officials time to determine

1 an alien's status without running the risk of the alien's either absconding or engaging in
2 criminal activity before a final decision can be made." *Jennings*, 583 U.S. at 286.
3 Multiple components of that statement show it is inapplicable to situations such as that
4 of Mr. Bista. First, Mr. Bista's status has already been determined and a final decision
5 about his deportation has indeed been made. This supports the interpretation discussed
6 above that it is inapplicable once a final order of removal has been issued. The
7 Government's argument may seem persuasive regarding the typical case of someone
8 detained upon entry who the Government believes will soon be deported, thus
9 authorizing the Government to hold them until the judicial process has run its course
10 and they can be removed. Its persuasiveness wanes significantly when one considers a
11 case like this in which detention is not necessary so the process can continue. Mr. Bista
12 is not being detained so the process can run its course. He is instead being detained
13 because the Government has not secured his deportation to Nepal and likely will not do
14 so in the foreseeable future but is unwilling to release him. Second, the Government has
15 not provided a modicum of evidence that Mr. Bista would flee or engage in criminal
16 activity if released. In short, the rationale for the statute, as outlined in *Jennings*, does
17 not support the continued detention of Mr. Bista.

18 **B. Mr. Bista's detention is indefinite and violates his right to due process.**

19 In his petition, Mr. Bista met his burden of showing that that "there is no
20 significant likelihood of removal in the reasonably foreseeable future" necessary to
21 support a claim that his continued detention violates his right to due process and,
22 therefore, the burden shifted to the Government. *See Zadvydas v. Davis*, 533 U.S. 678,
23 701 (2001) (holding that, after the presumptively reasonable period of detention of six
24 months, "once the alien provides good reason to believe that there is no significant
25 likelihood of removal in the reasonably foreseeable future, the Government must
26 respond with evidence sufficient to rebut that showing."); *Nadarajah v. Gonzales*, 443

1 F.3d 1069, 1077 (9th Cir. 2006). The burden therefore shifted to Respondents to
2 demonstrate that there is a likelihood of removal in the reasonably foreseeable future,
3 something the Government has not done. Dkt. 8 at 5–6. The Government does not
4 provide any evidence that removal in the reasonably foreseeable future is likely. Rather,
5 relying on an analysis of prolonged detention under 8 U.S.C. § 1225, the Government
6 only reasons that it is “feasible and likely” because there are no diplomatic obstacles to
7 deportation and his continued detention is “not arbitrary.” Dkt. 8 at 5. It is telling that
8 the Government does not argue any facts specific to Mr. Bista suggesting that removal
9 at any point is likely. The lack of evidence of efforts to deport Mr. Bista would indicate
10 that, over the past 13 months, no such efforts have been taken and this Court can have
11 no confidence that he will be removed anytime soon. The Government has failed to
12 meet its burden after Mr. Bista met his and, therefore, he is entitled to habeas relief.

13 Even if this Court agrees with the Government that 8 U.S.C. § 1225 governs,
14 under the test argued by the Government, Mr. Bista’s continued detention remains
15 indefinite, improper, and violative of due process. Dkt. 8 at 4–6 (citing *Banda v.*
16 *McAleenan*, 385 F.Supp.3d 1099, 1106 (W.D. Wash. 2019)). To the extent they are
17 applicable, the factors identified in *Banda* and cited by the Government weigh in Mr.
18 Bista’s favor. First, as to the length of detention and likely duration of future detention,
19 the Government argues that his detention in excess of a year with no prospect of
20 removal is proper. Dkt. 8 at 5. However, the Government cites two cases for this
21 proposition, one in which the length of detention was half as long as Mr. Bista’s and
22 another in which relief was granted. Dkt. 8 at 5 (citing *Demore v. Kim*, 538 U.S. 510,
23 531 (2003), and *Djelassi v. ICE Field Off. Dir.*, 434 F.Supp.3d 917, 923–24 (W.D.
24 Wash. 2020)). Those cases therefore weigh in Mr. Bista’s favor, not the Government’s.
25 Contrary to the Government’s assertion, the proceedings in this matter, which have now
26 gone past 13 months with no end in sight, are hardly “expedited.”

1 Next, the Government argues that the conditions of detention weigh against
2 release because they “are civil and non-punitive.” Dkt. 8 at 5-6. That assertion is cold
3 comfort for individuals like Mr. Bista who have been detained at the Northwest
4 Immigrant Processing Center (“NWIPC”) in custodial conditions for more than a year.
5 Moreover, it is belied by the circumstances present at the NWIPC, which, regardless of
6 how one classifies detention there, are harsh, particularly given the recent uptick in
7 immigration enforcement activity. *See* Sharon Yoo, “Conditions inside Northwest ICE
8 Processing Center ‘a Nightmare,’” King 5 (Oct. 31, 2025),
9 [https://www.king5.com/article/news/community/facing-race/washington-](https://www.king5.com/article/news/community/facing-race/washington-immigration/nightmare-conditions-inside-ice-detention-center-tacoma/281-1c20754c-93c6-4514-a989-e39ce5cf89d3)
10 [immigration/nightmare-conditions-inside-ice-detention-center-tacoma/281-1c20754c-](https://www.king5.com/article/news/community/facing-race/washington-immigration/nightmare-conditions-inside-ice-detention-center-tacoma/281-1c20754c-93c6-4514-a989-e39ce5cf89d3)
11 [93c6-4514-a989-e39ce5cf89d3](https://www.king5.com/article/news/community/facing-race/washington-immigration/nightmare-conditions-inside-ice-detention-center-tacoma/281-1c20754c-93c6-4514-a989-e39ce5cf89d3) [<https://perma.cc/497J-HV78>].

12 The Government next argues that other factors weigh in its favor because delays
13 are not attributable to the Government’s actions. Dkt. 8 at 5–6. However, they certainly
14 are not attributable to Mr. Bista, as the Government itself admits. Dkt. 8 at 6 (conceding
15 that Mr. Bista has not “caused delays through frivolous appeals or non-cooperation”).
16 Moreover, the lack of evidence of actions taken over the last year, coupled with the
17 Government’s assertion that Nepal “routinely accepts repatriations” indicates that his
18 prolonged detention is due to actions, or perhaps more accurately inactions, of agents of
19 the United States. These factors are far from “neutral” as the Government contends.
20 Dkt. 8 at 6. The delays and inaction by federal agents weigh heavily in Mr. Bista’s
21 favor.

22 Finally, the Government alleges, without support, that “the likelihood of removal
23 is high.” Dkt. 8 at 6. If it were high, there would have been some progress over the past
24 year. That the Government cannot point to a single action that has been taken to get
25 Mr. Bista any closer to deportation, the likelihood of removal in the near future is more
26 accurately classified as remote. Ultimately, even the more relaxed factors identified by

1 the Government establish that Mr. Bista's detention is indefinite and violative of his
2 right to due process.

3 Under any analysis, particularly under the proper analysis under 8 U.S.C. 1231,
4 Mr. Bista's continued detention is indefinite and improper, and he should be granted a
5 writ of habeas corpus and released.

6 **C. Mr. Bista's other requested remedies are legal, appropriate, and reasonable.**

7 The remainder of the Government's arguments do not concern the propriety of
8 Mr. Bista's detention and whether he should be ordered released. Rather, they concern
9 remedies he has requested to ensure that government agents do not retaliate and render
10 an order releasing him toothless. The Government argues that they are misplaced,
11 unripe, or outside the scope of habeas corpus. Dkt. 8 at 6–8. The Government's
12 arguments are misplaced as to each ground, and they will be addressed in turn.

13 First, the Government's argument that none of the statutes on which he bases his
14 petition have been violated is misplaced. The Government argues that there was no
15 violation of the Fifth Amendment, 8 U.S.C. § 1231, the Convention Against Torture
16 ("CAT"), its implementing regulations, or the Administrative Procedures Act. Dkt. 8 at
17 6–7. The Government is mistaken as to each of those provisions. Regarding the Fifth
18 Amendment, he articulated in his petition how it was violated, namely his continued
19 detention without due process of law. Dkt. 1 at 15–18. The Government's statement
20 that he was given a form of process through which he was ordered removed fails when
21 one notes that he has received no process with respect to the ensuing 13 months of
22 continued detention. Dkt. 8 at 6–7. Moreover, as stated above, the continued detention
23 clearly violates 8 U.S.C. § 1231 (or even 8 U.S.C. § 1225 if the Court adopts the
24 Government's analysis). As to the CAT and its implementing regulations, while the
25 Government is correct that Mr. Bista has not alleged torture, he is understandably
26 concerned about potential torture if deported to a third country which, as demonstrated

1 below, is a reasonable fear that must be assuaged. Lastly, the APA is applicable
2 because, contrary to the Government's analysis, 8 U.S.C. § 1225 does not apply and it
3 is therefore irrelevant whether decisions under that statute are discretionary. And,
4 despite the Government's statement to the contrary, they are clearly arbitrary and
5 contrary to the law.

6 Next, the Government argues that Mr. Bista's third-country banishment claims
7 are unripe and unmeritorious and that his requests for relief exceed the bounds of
8 habeas corpus. Dkt. 8 at 7–8. However, previous actions taken towards other detainees
9 belie that argument. Dkt. 1 at 12–14. Given that history, Mr. Bista can hardly be blamed
10 for not trusting the Government's statement that “[n]o known attempts have been made
11 to remove him to a third country” and this Court should view that statement with
12 skepticism as well. Dkt. 8 at 7. Given how quickly deportations can happen without a
13 court having the opportunity to review them, a prospective prohibition on such actions
14 is warranted. Given that the courts have “broad discretion” in granting habeas relief “as
15 law and justice require,” it should fashion an order with safeguards ensuring it cannot
16 be thwarted as soon as it is carried out. *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987);
17 *see also Uprety v. Bondi*, No. CV25-02443-JNW, 2026 U.S. Dist. LEXIS 13998, at *10
18 (W.D. Wash. Jan. 26, 2026) (“Without any re-detention standard, the Government
19 could theoretically re-detain [the petitioner] after release, which would render the
20 Court's order meaningless.”). Mr. Bista is not asking for a premature ruling on future
21 conduct. Rather, he is asking for a prohibition on the direct violation of the order this
22 Court would issue releasing him, absent some intervening change in circumstances.
23 That is entirely reasonable and appropriate. Arbitrary re-detention is a very real
24 possibility and must be prohibited.

III. CONCLUSION

For the reasons presented above and in Mr. Bista's habeas petition, Mr. Bista respectfully requests that this Court (1) order Respondents to immediately release Mr. Bista from custody and file a declaration within 48 hours verifying his release; (2) order that Respondents not remove or seek to remove Mr. Bista to a third country without notice and meaningful opportunity to respond in compliance with the statute and due process in reopened removal proceedings; (3) order that Respondents may not remove Mr. Bista to any third country because Respondents' third-country removal program seeks to impose unconstitutional punishment on its subjects; and (4) order all other relief this Court deems just and proper.

DATED this 23rd day of February 2026.

Respectfully submitted,

s/ Andrew D. Kennedy
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Attorney for Kamal Bista