

The Honorable Stanley A. Bastian

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

MAQSOOD ALI HAIDARI,

Petitioner,

v.

BRUCE SCOTT, *et al.*,

Respondents.¹

Case No. 2:26-cv-01146-SAB

FEDERAL RESPONDENT'S
RETURN MEMORANDUM

Noted for Consideration:
April 27, 2026

I. INTRODUCTION

This Court should deny Petitioner's Petition for Writ of Habeas Corpus. Dkt. No. 1. This filing, submitted approximately one month after this Court denied Petitioner's first habeas petition on March 18, 2026, in *Haidari v. ICE Field Off. Dir.*, No. 2:26-CV-00039-TL, 2026 WL 764689 (W.D. Wash. Mar. 18, 2026), constitutes an abuse of the writ. Petitioner does not present genuinely new material facts or circumstances that could not have been raised earlier. Instead, he seeks to

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

Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Department of Homeland Security Secretary Markwayne Mullin for Kristi Noem.

1 relitigate the reasonableness of his detention under 8 U.S.C. § 1225(b)(2)(A) based primarily on
2 the mere passage of additional weeks of detention, now totaling approximately seven months since
3 his re-detention on September 22, 2025, and the continued pendency of his Board of Immigration
4 Appeals (“BIA”) appeal, matters that were already litigated or readily foreseeable at the time of
5 the first denial.

6 Nonetheless, Petitioner’s detention remains reasonable under the framework recognized in
7 *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019). Removal to Afghanistan becomes
8 reasonably foreseeable once the BIA resolves the pending appeal of the Immigration Judge’s (“IJ”) removal order. The petition should be denied.

10 II. FACTUAL AND PROCEDURAL HISTORY

11 A. Petitioner Maqsood Ali Haidari

12 Petitioner is a native and citizen of Afghanistan. Declaration of Deportation Officer
13 Gennadiy Baz (“Baz Decl.”) ¶ 3; Declaration of Lawrence Van Daley (“Van Daley Decl.”), Exhibit
14 (“Ex.”) 1, Notice to Appear. He entered the United States on September 2, 2024, through a CBP
15 One appointment at the Calexico, California port of entry. Baz Decl., ¶ 4; Van Daley Decl., Ex. 2,
16 2024 Form I-213. He was placed in expedited removal proceedings and referred to U.S.
17 Citizenship and Immigration Services (“USCIS”) for a credible fear interview, which was
18 conducted on September 17, 2024. Baz Decl., ¶¶ 4-5; *see also* Van Daley Decl., Ex. 2, Ex. 7,
19 Credible Fear. On September 24, 2024, Petitioner was served with a Notice to Appear (“NTA”) charging him as removable under 8 U.S.C. § 1182(a)(7)(A)(i)(I), for being an immigrant without
20 valid entry documents. Baz Decl., ¶ 6; Van Daley Decl., Ex. 1. The NTA was filed with the
21 Executive Office for Immigration Review (EOIR) on the same day. Baz Decl., ¶ 6.

23 On October 6, 2024, Petitioner was granted humanitarian parole under 8 U.S.C.
24 § 1182(d)(5)(A), which was set to expire after one year or upon his departure from the United

1 States, whichever occurred first. Baz Decl., ¶ 7; Van Daley Decl., Ex. 3, Parole Packet. On
2 January 27, 2025, Petitioner filed a Form I-589, Application for Asylum and for Withholding of
3 Removal, with the immigration court. Baz Decl., ¶ 8. He appeared, represented by counsel, for a
4 hearing on the merits of his application before an immigration judge in San Diego on
5 September 15, 2025. Baz Decl., ¶ 10. At the conclusion of the hearing, the Petitioner was ordered
6 removed to Afghanistan. *Id.*; Van Daley Decl., Ex. 4, Immigration Judge Order.

7 On September 22, 2025, Petitioner was encountered at the Pacific Highway Port of Entry
8 in Blaine, Washington, being returned by Canadian Border Patrol authorities pursuant to the U.S. -
9 Canada Safe Third Country Agreement. Baz Decl., ¶ 11; Van Daley Decl., Ex. 5, 2025 Form I-
10 213. By attempting to depart the United States and enter Canada, Petitioner's parole terminated
11 automatically. *See* Van Daley Decl., Ex. 3. Upon his return to the United States, he was treated as
12 an arriving alien seeking admission without valid documents and taken into custody. *See* Baz
13 Decl., ¶ 11; *see also* Van Daley Decl., Ex. 5, Ex. 6, Warrant. He was processed as an alien subject
14 to a removal order that is not final and transported to the Northwest Immigration Processing Center
15 ("NWIPC") in Tacoma, Washington, where he remains detained. Baz Decl., ¶ 11; Van Daley
16 Decl., Ex. 5.

17 On October 10, 2025, Petitioner filed a timely appeal of the immigration judge's removal
18 order with the BIA. *See* Baz Decl., ¶ 12. On December 18, 2025, Petitioner requested a custody
19 redetermination (bond hearing) before the immigration court. *See* Baz Decl., ¶ 13. The immigration
20 judge denied the request, finding no jurisdiction because Petitioner is an arriving alien in removal
21 proceedings. Baz Decl., ¶ 14. On January 5, 2026, Petitioner filed a habeas petition with the United
22 States District Court for the Western District of Washington, which was subsequently denied on
23 March 18, 2026. Baz Decl., ¶ 16; *see also, Haidari v. ICE Field Off. Dir.*, No. 2:26-CV-00039-
24 TL. As of today, Petitioner's appeal remains pending.

1 **B. 8 U.S.C. § 1225(b)**

2 Petitioner is an arriving alien subject to mandatory detention pursuant to 8 U.S.C.
3 § 1225(b). 8 C.F.R. §§ 1.2 (definition of arriving alien), 235.3(c). Thus, “for aliens arriving in and
4 seeking admission into the United States who are placed directly in full removal proceedings,
5 section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal
6 proceedings have concluded.’” *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (citing *Jennings*
7 *v. Rodriguez*, 583 U.S. 281, 299 (2018)).

8 Congress has determined that all aliens subject to Section 1225(b) are subject to mandatory
9 detention. Regardless of whether an alien falls under Section 1225(b)(1) or (b)(2), the sole means
10 of release is “temporary parole from § 1225(b) detention ‘for urgent humanitarian reasons or
11 significant public benefit,’ § 1182(d)(5)(A).” *Jennings*, 583 U.S. at 283. This parole terminates
12 automatically at the expiration of the time for which parole was authorized, or upon service of a
13 charging document for either expedited removal proceedings under Section 1225(b) or removal
14 proceedings under Section 1229a. 8 C.F.R. §§ 212.5(e)(1); (2)(i). Upon termination of parole, the
15 applicant reverts to the status that he or she had at the time of parole. *See Id.*

16 Because a final order of removal has not yet been entered while an appeal remains pending
17 before the Board of Immigration Appeals, detention of an arriving alien is governed by the pre-
18 final-order mandatory detention statute at 8 U.S.C. § 1225(b), rather than the post-removal-order
19 detention provisions set forth in 8 U.S.C. § 1231(a). *Jennings*, 583 U.S. at 287-88 (distinguishing
20 the statutory schemes for detention before and after entry of a final order of removal). In the prior
21 habeas proceeding, the Court determined that Petitioner is detained pursuant to 8 U.S.C.
22 § 1225(b)(2).

23 //

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

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

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

III. LEGAL AUTHORITY

This Court has jurisdiction to review Petitioners’ habeas claims under 28 U.S.C. § 2241, as habeas jurisdiction extends to challenges to immigration detention. *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). However, the Petition fails on the merits. Petitioners’ detention is lawful, and their claims of constitutional and statutory violations are without merit.

IV. ARGUMENTS

A. Petitioner’s Successive Habeas Petition Constitutes an Abuse of the Writ

This is Petitioner’s second 8 U.S.C. § 2241 petition challenging the constitutionality of his detention under the mandatory-detention statute, 8 U.S.C. § 1225(b)(2)(A). The Court fully considered and rejected Petitioner’s as-applied due-process challenge on March 18, 2026, finding that his detention, at that time approximately six months since re-custody on September 22, 2025, remained reasonable under the *Banda* framework. Petitioner now returns to this Court with largely

1 the same claim, asserting “materially changed circumstances” that consist primarily of (1) the
2 detention having “surpassed the six-month threshold” previously referenced by the Court and
3 (2) the continued pendency of his BIA appeal, with a stated intent to seek Ninth Circuit review if
4 the appeal is denied. These assertions do not justify a successive petition.

5 The common-law doctrine of abuse of the writ is a longstanding prudential rule that
6 “defines the circumstances in which federal courts decline to entertain a claim presented for the
7 first time in a second or subsequent petition for a writ of habeas corpus.” *McCleskey v. Zant*,
8 499 U.S. 467, 470 (1991). Under this doctrine, a petitioner must demonstrate “cause and prejudice”
9 for failing to raise the claim in the prior petition, or that a “fundamental miscarriage of justice”
10 would result from the court’s refusal to entertain the new claim. *Id.* at 468-71. Although the
11 Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), codified at 28 U.S.C.
12 § 2244(b), imposes strict statutory gatekeeping requirements only on second or successive
13 petitions filed under 28 U.S.C §§ 2254 and 2255, the pre-AEDPA common-law abuse-of-the-writ
14 doctrine continues to apply with full force to habeas petitions brought under 28 U.S.C. § 2241. *See*
15 *Barapind v. Reno*, 225 F.3d 1100, 1110-11 (9th Cir. 2000) (applying abuse-of-the-writ principles
16 to an 8 U.S.C. § 2241 immigration habeas petition and holding that the doctrine survives AEDPA’s
17 amendments for non 28 U.S.C. § 2254/2255 cases).

18 The abuse of writ doctrine serves important interests of finality, judicial economy, and
19 respect for the statutory scheme of mandatory detention under 8 U.S.C. § 1225(b). Allowing
20 successive petitions based on nothing more than the mere passage of additional weeks or months
21 of detention would transform habeas review into an ongoing administrative monitoring function,
22 contrary to the limited role of the federal courts in reviewing executive detention authorized by
23 Congress. *See McCleskey*, 499 U.S. at 491-92 (emphasizing that the doctrine prevents “abuse of
24 the writ” and promotes the orderly administration of justice).

1 In the immigration detention setting, immigration courts have analogized the abuse-of-the-
2 writ inquiry to the regulatory requirement for “materially changed circumstances” that must be
3 shown before a second bond redetermination request may be entertained by an Immigration Judge.
4 *See* 8 C.F.R. § 1003.19(e) (“A request for a bond redetermination based on changed circumstances
5 shall be considered by an Immigration Judge only if the alien demonstrates that his or her
6 circumstances have changed materially since the time of the original bond hearing.”). The same
7 logic applies with even greater force in federal habeas proceedings: the mere continuation or
8 modest extension of detention that was already adjudicated as reasonable does not, without more,
9 constitute a material change sufficient to warrant a new habeas filing. Here, the interval since this
10 Court’s denial is exceptionally short, approximately one month, and Petitioner identifies no new
11 evidence of government-caused delay, altered conditions of confinement at NWIPC, changed
12 country conditions affecting removal to Afghanistan, or any other development that could not have
13 been anticipated or presented at the time of the first petition. The BIA appeal was already pending
14 when the first habeas petition was filed and denied; Petitioner’s stated intention to seek further
15 Ninth Circuit review if necessary was likewise foreseeable. Moreover, the Court has already
16 determined that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2) and that his detention was
17 reasonable under the *Banda* factors at the time of the prior ruling. *See Haidari*, 2:26-CV-00039-
18 TL. These prior determinations carry significant persuasive weight and further counsel against
19 relitigating the same issues so soon after the Court’s decision. Under these circumstances,
20 Petitioner has failed to carry his burden to demonstrate cause and prejudice or a fundamental
21 miscarriage of justice. *McCleskey*, 499 U.S. at 493-96.

22 Accordingly, the petition should be denied as an abuse of the writ without reaching the
23 merits of the *Banda* analysis.
24

B. Alternatively, Petitioner's Continued Detention Is Constitutionally Reasonable

Even if the Court elects to reach the merits, Petitioner's continued detention of approximately seven months since his re-custody on September 22, 2025, remains constitutionally reasonable when evaluated under the multi-factor framework adopted by this District in *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1107-10 (W.D. Wash. 2019). In *Banda*, the Court recognized that, although 8 U.S.C. § 1225(b) imposes mandatory detention without a statutory bond hearing, prolonged detention may, in certain circumstances, violate due process on an as-applied basis. *Id.* at 1107. To determine whether continued mandatory detention has become unreasonable, the Court weighs the following non-exhaustive factors: (1) the total length of detention to date; (2) the likely duration of future detention; (3) the conditions of detention; (4) the reasons for any delays in the removal proceedings caused by the detainee; (5) the reasons for any delays caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal. *Id.* at 1107-10; *see also Jennings*, 583 U.S. at 299 (recognizing that mandatory detention under 8 U.S.C. § 1225(b) continues until removal proceedings conclude); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1195-96 (9th Cir. 2022) (post-*Jennings* due-process analysis in prolonged detention cases turns on the totality of the circumstances rather than any fixed time limit).

Importantly, neither the Supreme Court nor the Ninth Circuit has established a bright-line rule or presumptive "six-month threshold" after which detention under 8 U.S.C. § 1225(b) automatically becomes unreasonable. *Jennings*, 583 U.S. at 299; *Rodriguez Diaz*, 53 F.4th at 1195-96. The mere passage of one additional month since this Court's prior denial does not constitute a material change or render detention unconstitutional.

This Court already applied these exact factors in Petitioner's first habeas proceeding and concluded on March 18, 2026, that detention of approximately six months had not yet become unreasonable. Each *Banda* factor continues to weigh in favor of the government.

1 First, the total length of detention, approximately seven months, is not extraordinary.
2 *Banda*, 385 F. Supp. 3d at 1109. Courts in this District routinely hold that detention periods of six
3 to twelve months for arriving aliens with active removal proceedings remain reasonable. *See, e.g.*,
4 *Cardozo v. Bostock*, 2:25-CV-00871-TMC, 2025 WL 2592275 (W.D. Wash. Sept. 8, 2025)
5 (denying habeas relief where detention exceeded eight months). Petitioner's seven-month period
6 falls well within the range that this District has consistently found constitutional.

7 Second, the likely duration of future detention is not indefinite. Petitioner's BIA appeal
8 remains pending, but once the BIA issues a decision, removal to Afghanistan becomes reasonably
9 foreseeable. *Jennings*, 583 U.S. at 299. Petitioner's own actions, attempting to enter Canada
10 immediately after the IJ's removal order, further demonstrate both a risk of flight and that the
11 government is actively pursuing removal. The BIA appeal timeline is typical and does not render
12 future detention unreasonably prolonged.

13 Third, Petitioner has not alleged, much less demonstrated, that the conditions of his
14 confinement at NWIPC are unusually harsh or punitive. Absent such evidence, this factor weighs
15 strongly in favor of the government. *Banda*, 385 F. Supp. 3d at 1109.

16 Fourth and fifth, any delays in the removal proceedings are not attributable to the
17 government. Petitioner requested and received a merits hearing before the IJ, filed a timely appeal
18 to the BIA, and previously requested a bond redetermination. The government has not sought
19 unnecessary continuances. Petitioner bears responsibility for the time required to litigate his
20 claims. *See Rodriguez Diaz*, 53 F.4th at 1196.

21 Sixth, the likelihood that the proceedings will result in a final order of removal is high. The
22 IJ already conducted a full evidentiary hearing on the merits and ordered Petitioner removed to
23 Afghanistan. The BIA appeal does not negate the strong probability of a final removal order.
24 *Banda*, 385 F. Supp. 3d at 1110.

1 Weighing these factors together under the totality-of-the-circumstances approach,
2 Petitioner's detention has not become constitutionally unreasonable. *Rodriguez Diaz*, 53 F.4th at
3 1195-96; *Banda*, 385 F. Supp. 3d at 1110.

4 **C. Petitioner's Removal Is Reasonably Foreseeable and Does Not Violate Due Process**

5 As an arriving alien detained under 8 U.S.C. § 1225(b)(2)(A), Petitioner's removal
6 becomes reasonably foreseeable once the BIA resolves his pending appeal of the IJ's merits
7 removal order. *Jennings*, 583 U.S. at 299 (Congress intended detention under 8 U.S.C. § 1225(b)
8 to continue until removal proceedings conclude). The Supreme Court has long recognized that the
9 government may constitutionally require mandatory detention of aliens during the pendency of
10 removal proceedings without individualized bond hearings. *Demore v. Kim*, 538 U.S. 510, 531
11 (2003) ("[D]etention during deportation proceedings [is] a constitutionally valid aspect of the
12 removal process."). The fact that Petitioner intends to seek further review in the Ninth Circuit if
13 the BIA affirms the IJ's order does not render removal unforeseeable; it merely reflects the
14 ordinary course of administrative and judicial review contemplated by the INA. Petitioner's prior
15 attempt to enter Canada after the IJ ordered removal further confirms that removal efforts are
16 neither futile nor indefinite.

17 Petitioner likewise has a meaningful mechanism for release: the Secretary's discretionary
18 parole authority under 8 U.S.C. § 1182(d)(5)(A). Immigration and Customs Enforcement officers
19 continue to review Petitioner's custody status consistent with applicable regulations, and Petitioner
20 was previously granted parole in October 2024 before it was not extended. The absence of a
21 statutory bond hearing does not create a due-process violation. *Jennings*, 583 U.S. at 299 (rejecting
22 the argument that mandatory detention under 8 U.S.C. § 1225(b) must be time-limited or
23 accompanied by periodic bond hearings). Petitioner's as-applied challenge therefore fails under
24 the *Banda* framework for the reasons detailed above. *Banda*, 385 F. Supp. 3d at 1110.

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V. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court deny the second petition for writ of habeas corpus in its entirety, either as an abuse of the writ or, alternatively, on the merits.

DATED this 20th day of April, 2026.

Respectfully submitted,

s/ Lawrence Van Daley

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I certify that this memorandum contains 2,952 words, in compliance with the Local Civil Rules.