UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JESUS BENTO CARDOZO, et al.,

Petitioner,

v.

DREW BOSTOCK, et al.,

Respondents.

CASE NO. 2:25-cv-00871-TMC-BAT

REPORT AND RECOMMENDATION

INTRODUCTION AND BACKGROUND

On May 8, 2025, Petitioners (1) Jesus Bento Cardozo; (2) Relson Fernandes; (3) Yassine Belhaj; (4) Marouane Boulhjar; and (5) Mouloud Ben Khadaj filed a 28 U.S.C. § 2241 petition for writ of habeas corpus alleging they have languished in immigration detention without receiving an initial hearing in their native languages[1] because the Executive Office for Immigration Review (EOIR) has failed to obtain interpretation services for their removal proceedings. Dkt. 1 at 2 (habeas petition).

Since the petition was filed, Petitioners Cardozo, and Boulhjar have accepted voluntary departure and have withdrawn their requests for habeas relief. Petitioner Fernandes also accepted

[1] Petitioners Cardozo and Fernandes are from India and speak a dialect of Konkani. Petitioners Belhaj, Boulhjar, and Khadaj are from Morocco and speak Hassaniya, or Tacelhit.

voluntary departure with an agreement to depart the country by August 22, 2025, and Petitioner Belhaj withdrew his application for relief from removal and a final order of removal has been issued. Thus, the sole Petitioner seeking habeas relief is Petitioner Khadaj.

Petitioner Khadaj contends his prolonged detention, without a bond hearing, violates his due process rights. As relief, he asks the Court to order his immediate release if he is not granted a bond hearing within 14 days, or alternatively conduct a judicial hearing to determine whether detention is justified. Petitioner also requests a declaration his detention violates due process because the statute governing his detention is unconstitutional and that his lawyers be awarded attorney fees and costs under the Equal Access to Justice Act (EAJA). *Id.*at 24-25.

On June 27, 2025, Respondents filed a return and moved to dismiss the habeas petition. Dkts. 11-14 (return and supporting declarations). Respondents acknowledge Petitioners' removal proceedings have been delayed due to difficulties in securing interpreters, and Petitioners have a due process right to be provided adequate interpreters so they can meaningfully participate in their removal proceedings. Dkt. 11 at 1-2. However, citing to the standards applied in *Banda v. McAleenan*, 385 F.Supp 1099 (W,D, Wash. 2019), Respondents contend Petitioners' due process rights have not been violated because Respondents have diligently sought to obtain adequate interpreters; adequate interpreters have now been provided to Petitioners Boulhjar, Belhaj, and Khadaj; Petitioner Boulhjar has agreed to voluntarily depart the country and is not in custody; Petitioners Cardozo and Fernandes have hearings set for June 30, 2025; and the length of Petitioners' detention has not reached the length of time other courts have recognized as triggering the requirement that a bond hearing be provided. *Id.* at 2.

On July 2, 2025, Respondents filed a "Notice of Supplemental Facts" in which they aver on June 30, 2024 a hearing was held and Petitioners Cardozo and Fernandes were able to

communicate with the Immigration Judge through an interpreter; the Immigration Judge granted Cardozo's request for voluntary departure and scheduled another hearing for July 16, 2025 to allow Petitioner Fernandes time to seek legal representation. Dkt. 15.

On July 18, 2025, Petitioners filed a response to Respondent's request for dismissal. Dkt. 18. Petitioners Cardozo and Boulhjar state they have accepted voluntary departure, withdraw their habeas claims and do not seek relief from the Court. *Id.* at 2.

Petitioners Khadaj and Fernandes indicate they were provided interpreter at a June 2025 hearing and another hearing has been scheduled for each of them. Petitioner Belhaj was provided an interpreter in May 2025 and at a June 2, 2025 hearing, he submitted an application for asylum and withholding of removal; a hearing on the merits is set for August 11, 2025.

Petitioners also argue the Court should apply the standards set forth in *Banda v. McAleenan*, 385 F.Supp. 3d 1099 (W.D. Wash. 2019), and contend that under those standards, due process requires the Court order Respondents to grant them a bond hearing within 14 days at which time Respondents must justify continued detention by clear and convincing evidence. In specific, Petitioners argue the Court should find detention in excess of six months presumptively violates due process; the Court should consider the anticipated duration of all proceedings at the administrative and judicial levels which in this case will involve many months; Petitioners conditions of confinement are similar to or worse than imprisonment in a jail or prison; Petitioners have not engaged in any conduct that has contributed to delays in securing interpreters; and the likelihood of removal either favors Petitioners or is neutral.

On July 25, 2025, Respondents filed a reply in which they aver: (A) Petitioners Cardozo, and Boulhjar have each accepted voluntary departure and have withdrawn their habeas claims, Dkt. 23, at 2; (B) on July 23, 2025, Petitioner Fernandes accepted voluntary departure with an

agreement to depart the country by August 22, 2025; and (C) on July 24, 2025, Petitioner Belhaj withdrew his application for relief from removal and a final order of removal has been issued as Petitioner Belhaj waived appeal. *Id.*

In light of these developments, Respondent contends Petitioner Khadaj is the only remaining party seeking habeas relief. As to Petitioner Khadaj, Respondents argue the Court should deny habeas relief because he is lawfully detained, and the *Banda* factors do not favor ordering a bond hearing or granting Petitioner immediate release from detention. In specific, Respondent argues Petitioner incorrectly claims there is a presumption detention is unreasonable if it exceeds six-months; the Court would be required to speculate as to the length of future detention; and Respondents are not at fault for the length of Petitioner's detention.

Having considered the parties' pleadings and the record, the Court recommends:

1. **DISMISSING** the habeas claims for relief brought by all Petitioners other than the claims brought by Petitioner Khadaj.

2 **GRANTING** Petitioner Khadaj's request for a bond hearing. If this recommendation is adopted, the bond hearing should occur within 35 days of the District Judge's order, rather than within 14 days as Petitioner requests.

2. **DENYING** Petitioner's request for immediate release or for a hearing before this Court to determine Petitioner's detention.

3. **DENYING** Petitioner's request that the Court declare the statute governing his detention is unconstitutional as applied to his case.

DISCUSSION

A less than straightforward statutory scheme governs the detention of noncitizens during removal proceedings and following the issuance of a final order of removal. "Where an alien

falls within this statutory scheme can affect whether his detention is mandatory or discretionary, as well as the kind of review process available to him if he wishes to contest the necessity of his detention." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).

Respondents contend Petitioners are subject to mandatory detention under 8 U.S.C. § 1225(b). Dkt. 11 at 11. In support, they aver shortly after entering the United States unlawfully without inspection, each Petitioner was apprehended and processed as an "Expedited Removal," Dkt. 11 at 3, 5, 6, 7, and 8. The Supreme Court describes 8 U.S.C. § 1225 as follows:

> Under § 302, 110 Stat. 3009–579, 8 U.S.C. § 1225, an alien who "arrives in the United States," or "is present" in this country but "has not been admitted," is treated as "an applicant for admission." § 1225(a)(1). Applicants for admission must "be inspected by immigration officers" to ensure that they may be admitted into the country consistent with U.S. immigration law. § 1225(a)(3).
>
> As relevant here, applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2). Section 1225(b)(1) applies to aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. See § 1225(b)(1)(A)(i) (citing §§ 1182(a)(6)(C), (a)(7)). Section 1225(b)(1) also applies to certain other aliens designated by the Attorney General in his discretion. See § 1225(b)(1)(A)(iii). Section 1225(b)(2) is broader. It serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here). See §§ 1225(b)(2)(A), (B).
>
> Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of certain aliens. Aliens covered by § 1225(b)(1) are normally ordered removed "without further hearing or review" pursuant to an expedited removal process. § 1225(b)(1)(A)(i). But if a § 1225(b)(1) alien "indicates either an intention to apply for asylum ... or a fear of persecution," then that alien is referred for an asylum interview. § 1225(b)(1)(A)(ii). If an immigration officer determines after that interview that the alien has a credible fear of persecution, "the alien shall be detained for further consideration of the application for asylum." § 1225(b)(1)(B)(ii). Aliens who are instead covered by § 1225(b)(2) are detained pursuant to a different process. Those aliens "shall be detained for a [removal] proceeding" if an immigration officer "determines that [they are]

> not clearly and beyond a doubt entitled to be admitted" into the country. § 1225(b)(2)(A).
>
> Regardless of which of those two sections authorizes their detention, applicants for admission may be temporarily released on parole "for urgent humanitarian reasons or significant public benefit." § 1182(d)(5)(A); *see also* 8 C.F.R §§ 212.5(b), 235.3 (2017). Such parole, however, "shall not be regarded as an admission of the alien." 8 U.S.C. § 1182(d)(5)(A). Instead, when the purpose of the parole has been served, "the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." Ibid.

Jennings v. Rodriguez, 583 U.S. 281, 287–88 (2018).

In short, § 1225(b) applies to an "applicant for admission," i.e., "[a]n alien present in the United States who has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a)(1). Under § 1225(b)(1), applicants for admission initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation are normally ordered removed without further hearing or review' pursuant to an expedited removal process. But if the alien applies for asylum and has a credible fear of persecution, "the alien shall be detained for further consideration of the application." 8 U.S.C. § 1225(b)(1)(B)(ii). All other applicants for admission fall under § 1225(b)(2), which is a catchall provision and which mandates detention "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted," 8 U.S.C. § 1225(b)(2)(A).

Once an alien has a final removal order that is not subject to a judicial stay, detention authority shifts to 8 U.S.C. § 1231(a). *See Diouf v. Napolitano*, 634 F.3d 1081, 1085 (9th Cir. 2011); 8 U.S.C. § 1231(a)(1)(B). Section 1231(a) provides "the Attorney General shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). "During the removal period, the Attorney General shall detain the alien." *Id*. § 1231(a)(2). Certain

individuals—such as those who are convicted criminals, terrorists, or who are otherwise "determined by the Attorney General to be a risk to the community or unlikely to comply with the order or removal"— "may be detained beyond the removal period." *Id*. § 1231(a)(6).

Petitioners in their responsive brief do not argue Respondents lack the authority to detain them or that they are not subject to detention under § 1225(b). Rather they claim their prolonged detention violate their Due Process rights. *See* Dkt. 18 (response to motion to dismiss). Petitioners focus upon the length of detention because since they filed their habeas petition, the facts supporting their claims have changed. As noted above, Petitioners Cardozo, Fernandes, Belhaj, and Boulhjar have either accepted voluntary departure of have withdrawn opposition to removal and have been ordered removed. The request by these Petitioners for federal habeas are no longer before the Court and their habeas claims should thus be dismissed.

As to Mr. Khadaj, the remaining Petitioner, it appears he has been provided interpreters, appeared at hearings, and has future scheduled hearings. Hence, the facts supporting his original claim which focused upon the lack of any interpreter has been altered. Given this, the focus of his argument appears to be that although adequate interpreters have been provided, the length of his detention has reached a point where it is now unconstitutional, and the Court should thus order Respondents to either release him or grant a bond hearing within 14 days of an order granting habeas relief.

Respondents contend and Petitioner Khadaj does not contest that his detention is governed by § 1225(b). The Supreme Court in *Jennings v. Rodriguez*, *supra,* held, as a matter of statutory interpretation, § 1225(b) mandates detention even during the pendency of an asylum application proceeding. But the *Jennings* decision did not address or resolve the constitutional issue of whether the due process clause requires a hearing and possible release when detention is

prolonged. The Supreme Court remanded *Jennings*, and on remand, the Ninth Circuit also declined to address the constitutional issue but noted the district court should determine the minimum requirements of due process. *See Rodriguez v. Marin*, 909 F.2d 252, 255-56 (9th Cir. 2018) ("We have grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional"; and Section 1225(b) provides "no process at all.").

In short, while Petitioner Khadaj lacks a statutory right to a bond hearing under § 1225(b), due process requires he be afforded a bond hearing, at some point in time, once it is determined his detention is unconstitutionally prolonged. *See Djelassi v. ICE Field Office* Director, 434 F.Supp. 3d 917, 919 (W.D. Wash. 2020) (holding under § 1225(b) Petitioner enjoys no statutory right to a bond hearing but has a due process right to one).

While due process requires a bond hearing at some point, it is unclear at what exact point continued immigration detention become unconstitutional. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1203 (2022) (noting the Ninth Circuit "and the Supreme Court have repeatedly declined to decide constitutional challenges to bond hearing procedures in the immigration detention context").

Here, both parties argue the Court should assess whether a bond hearing should be ordered based upon the factors utilized in *Banda v. McAleenan*, 385 F. Supp. 3d 1009, 1117-118 (W D. Wash. 2019). In *Banda* the Court found petitioner's 17-month detention had become unreasonable and analyzed whether a bond hearing should be granted in view of (1) length of detention; (2) how long detention is likely to continue absent judicial intervention; (3) conditions of detention; (4) the nature and extent of any delays in the removal caused by the petitioner; (5) the nature and extent of any delays caused by the government; and (6) the likelihood that the final proceedings will culminate in a final order of removal. *See Id.*

The parties have diametrically opposed views as to how the Court should weigh each of the factors used in *Banda*. Petitioner Khadaj was taken into immigration custody on September 15, 2024, and has now been in custody for just over 10 months. *See* Dkt. 11 at 11 (Respondents' Motion to Dismiss). Respondents contend Petitioners' 10-month detention is not unconstitutional. Dkt. 11 at 11. Petitioner disagree arguing detention exceeding six months presumptively violates due process, and some courts have found detention of less than ten months without a bond hearing violates due process. *Dkt.* 18 at 4-6.

No bright line rule has been created declaring detention of six months or more without a bond hearing is unconstitutional. Indeed, the Supreme Court in *Jennings* rejected the contention that § 1225(b) and § 1226(c) should be interpreted to include an implicit 6-month limit on mandatory detention. *Jennings v. Rodriguez*, 583 U.S. at 304. Thus, the Court declines to find any basis to conclude six months of detention is presumptively unconstitutional in Petitioner's case which involves detention under § 1225(b), and where delays in his immigration proceedings were caused by the difficulty in obtaining an adequate interpreter. However, the duration of Petitioner's detention is not insignificant, and the Court accordingly finds the duration of detention factor favors Petitioner.

The Court makes this finding for several reasons. This Report and Recommendation is subject to objection, and thus the matter may not be ripe for the assigned District Judge's consideration for at least 14 days, and for a longer if objections are lodged. Once the matter becomes ripe for review, additional time will then pass so the District Judge can perform a de novo review of this Report. Hence, by the time the matter is ripe for review, Petitioner will likely have been in custody for 11 months, and then more time will pass before issuance of a dispositive order.

Additionally, the Court makes this finding because Respondents acknowledge courts have found immigration detention falling between 13 and 32 months, without a bond hearing, to be unconstitutionally prolonged. Dkt.11 at 11. Respondents also contend this Court should apply the analysis set forth in *Banda*, a case in which Respondent's acknowledge the district judge found the 17-month long detention of an immigration petitioner held under § 1225(b) was unreasonable. *Id.* at 10. Thus, Respondents recognize that even when a non-citizen is lawfully detained under § 1225(b), there comes a point that continued detention without a bond hearing violates due process. The length of Petitioner's detention nears the zone of time that courts have recognized as unreasonable, absent a bond hearing, and the duration of Petitioner's confinement accordingly tilts in his favor.

As to the second *Banda* factor Respondents have not indicated that absent judicial intervention, Petitioners will ever be afforded a bond hearing. The second factor thus favor Petitioner.

Turning to the third *Banda* factor, Petitioner is detained at the Northwest ICE Processing Center (NWIPC). Petitioner submits he is held in criminal jail or prison conditions; he is confined with no outdoor access; and the food, hygiene and medical care are substandard. Respondents contend the Court should not rely upon Petitioners' declarations because there is no evidence the declarations were completed by competent translators. The Count finds this factor favors Petitioner. He has provided additional evidence that the declarations were translated by sufficiently competent translators. Further, Respondents have not denied the assertions contained in Petitioner's declarations or provided any evidence that contradict Petitioner's claims about the conditions of his confinement.

Regarding the fourth and fifth *Banda* factors, Petitioners' immigration proceedings have

primarily been delayed due to the lack of interpreters. The Court finds these factors favor neither side. There may have been a slight delay based upon Respondents' perception that Petitioners did not need highly specialized interpreters. But once it was clear specialized interpreters were needed, it appears Respondents did not ignore that need but attempted to address it. There is also no evidence that Respondents intentionally attempted to deny Petitioner an adequate interpreter.

And lastly as to the sixth factor, the parties spar over the likelihood of the outcome of Petitioner's immigration proceedings. That four of the five Petitioners have withdrawn their habeas claims highlights how there is no reliable way to predict the outcome of this matter or to determine whether Petitioner will prevail in his efforts to challenge Respondents' removal action. This factor favors neither side.

In sum, the Court finds three of the *Banda* factors,[2] favor Petitioner, and three favor neither side. The Court accordingly concludes and recommends:

1. **GRANTING** Petitioner's request he be afforded a bond hearing, at which time Respondents shall bear the burden to show by clear and convincing evidence that he is a flight risk or danger to the community at the time of the hearing. *See Banda v. McAleenan,* 385 F.Supp.3d at 1121. The issue of granting Petitioner relief revolves around **when** a bond hearing should be granted, not **if** a hearing should be granted. This is because it cannot be denied that at some point, Petitioner's continued detention without a bond hearing will violate due process. No bright line for assessing prolonged detention exists but Petitioner's detention has now inched toward the point where continued detention without a bond hearing has been recognized by other courts as raising due process concerns. The Court thus recommends directing Respondents to provide Petitioner a bond hearing no later than 35 days from the issuance of any order adopting

[2] The length of detention is the most important factor. *See Banda*, 385 F.Supp.3d at 1118.

this recommendation. If this recommendation is adopted, Petitioner will have been in custody for approximately 12-13 months depending upon the date a dispositive order is filed. The length of Petitioner's detention of 12-13 months would fall within the length of detention other courts have recognized as calling for a bond hearing. The Court notes this recommendation does not set forth a standard in which the detention of an immigration detainee should not be deemed unreasonably prolonged unless at least 12 months of detention has lapsed. As the Supreme Court has indicated "due process is flexible," and "calls for such procedural protections as the particular situation demands." *Jennings v. Rodriguez*, 583 U.S. at 314. Hence while the Court recommends a bond hearing be afforded within 35 days of adoption of this report, there may be instances in which a bond hearing should be ordered even when the detainee has been held for fewer than 12 months.

2. **DENYING** Petitioner's request that § 1225(b) be declared unconstitutional and Petitioner's detention violates due process. Petitioner presents no convincing authority that would allow the Court to find § 1225(b) is unconstitutional as applied to his case. *See* Dkt. 1 at 24-25 (habeas petition). He does not contest the fact he has been detained under § 1225(b), and the Supreme Court in *Jennings v. Rodriguez* has held this statute does not provide a statutory right to a bond hearing. The Supreme Court specifically did not strike down the statute as unconstitutional and while the Court of Appeals for the Ninth Circuit has stated "we have grave doubts any statute that allows for arbitrary prolonged detention without any process is constitutional," the Circuit has also not held § 1225(b) is unconstitutional. *Rodriguez v. Marin,* 909 F.3d 252, 256 (9th Cir. 2018).

Petitioner's due process claim regarding detention under § 1225(b) has arisen only after detention, without a bond hearing, has continued for what this Court has now deemed to have reached the point of unconstitutional duration. Thus, his detention up to this point is not

necessarily unconstitutional. As the Court has discussed above, there is no bright-line rule that can be applied to this case, and which would establish Petitioner's due process rights have already been violated due to the duration of his detention. Rather, the Court must weigh the factors set forth in *Banda,* and in view of those factors deems the length of Petitioner's detention has started to reach the point in which a bond hearing should be afforded if Respondents desire to continue his detention.

2. In recommending Petitioner be granted a bond hearing no later than 35 days from issuance of a dispositive order, the Court recommends **DENYING** Petitioner's request for immediate release. A petitioner in immigration detention may be entitled to immediate release if his or her detention is indefinite under *Zadvydas v. Davis*, 533 U.S. 678 (2001), i.e., where there is no reasonable likelihood of removal in the foreseeable future. However, Petitioner presents nothing indicating he cannot be removed or that his detention is otherwise indefinite. Petitioner also asks the Court to conduct its own hearing to determine detention. Under the circumstances of this case, such a determination is for an immigration judge to make, and not for this Court in the first instance on habeas review. Accordingly, it is recommended the Court **DENY** the request for immediate release or conduct its own hearing to determine Petitioner's detention.

OBJECTIONS AND APPEAL

This Report and Recommendation is not an appealable order. Therefore, a notice of appeal seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the assigned District Judge enters a judgment in the case.

Objections, however, may be filed and served upon all parties no later than **August 12, 2025.** The Clerk shall note the matter for **August 15, 2025**, as ready for the District Judge's consideration if no objection is filed. If objections are filed, any response is due within 14 days

after being served with the objections. A party filing an objection must note the matter for the Court's consideration 14 days from the date the objection is filed and served. The matter will then be ready for the District Judge's consideration on the date the response is due. The failure to timely object may affect the right to appeal.

DATED this 29th day of August, 2025.

BRIAN A. TSUCHIDA
United States Magistrate Judge