

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JESUS BENTO CARDOZO; RELSON  
FERNANDES; YASSINE BELHAJ;  
MAROUANE BOULHJAR; and  
MOULOUD BEN KHADAJ,  
  
Petitioner,

v.

DREW BOSTOCK; KRISTI NOEM;  
UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY; PAMELA  
BONDI; BRUCE SCOTT,  
  
Respondent.

Case No. 2:25-cv-00871-TMC

ORDER ON REPORT AND  
RECOMMENDATION

**I. INTRODUCTION**

Before the Court are Petitioner Mouloud Ben Khadaj's objections to the Report and Recommendation ("R&R") issued by the Honorable Brian A. Tsuchida, United States Magistrate Judge. The Court has considered the R&R (Dkt. 25), Petitioner Khadaj's objections (Dkt. 26), and the response to those objections from Respondents (Dkt. 27). The Court has conducted de

1 novo review of the R&R based on Petitioner’s objections. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R.  
2 Civ. P. 72(b); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). For  
3 the reasons explained below, the Court sustains Petitioner’s objections and otherwise adopts the  
4 R&R.

## 5 II. DISCUSSION

6 The parties agree that whether due process requires a bond hearing for Petitioner is  
7 governed by the factors from *Banda v. McAleenan*, 385 F. Supp. 3d 1009, 1117–18 (W.D. Wash.  
8 2019). *See* Dkt. 25 at 8. That standard is contained in the R&R and will not be repeated here. *See*  
9 *id.* The Court will address each objection in turn.

### 10 A. The fourth and fifth *Banda* factors favor Petitioner.

11 First, Petitioner objects that the fourth and fifth *Banda* factors—the nature and extent of  
12 any delays caused by Petitioner and the government, respectively—should favor Petitioner.  
13 Dkt. 26 at 2–3; *see Banda*, 385 F. Supp. 3d at 1119–20. The R&R found that these factors were  
14 neutral, explaining that Petitioner’s “immigration proceedings have primarily been delayed due  
15 to the lack of interpreters,” but that “once it was clear specialized interpreters were needed, it  
16 appears Respondents did not ignore that need but attempted to address it.” Dkt. 25 at 10–11.  
17 Respondents argue this conclusion was correct because the government made significant efforts  
18 to secure interpreters. Dkt. 27 at 3.

19 Applying de novo review, the Court agrees with Petitioner that these factors also weigh  
20 in favor of requiring bond hearing. In *Banda*, the delay in immigration proceedings was also  
21 primarily caused by difficulty securing an interpreter in the right dialect. 385 F. Supp. 3d at 1120  
22 (“In this case, essentially all the delay between petitioner’s first master calendar hearing . . . and  
23 his merits hearing . . . was caused by the lack of an appropriate interpreter or DHS’s request for a  
24 continuance.”). Even though the petitioner in *Banda* understood English to some extent, the court

1 concluded that when there was “no indication that petitioner deliberately sought to delay the  
2 proceedings” or “engage in dilatory tactics,” the delay caused by the necessity of finding an  
3 interpreter “is attributable to the Government, not petitioner.” *Id.* at 1119–20. Because there is no  
4 material difference between the interpreter delay in this case and *Banda*, the fourth and fifth  
5 *Banda* factors favor Petitioner. The Court therefore sustains Petitioner’s objection and declines  
6 to adopt the R&R on this point.

7 **B. A bond hearing is required because Petitioner’s prolonged mandatory detention**  
8 **under Section 1225(b) violates due process.**

9 Second, Petitioner objects to the R&R’s conclusion that while a bond hearing is required,  
10 the Court should not declare that 8 U.S.C. § 1225(b) is unconstitutional as applied to Petitioner  
11 or that Petitioner’s continued detention violates due process. Dkt. 26 at 3–4; *see* Dkt. 25 at 12–  
12 13. Petitioner argues that this conclusion is logically inconsistent; under the relevant case law,  
13 the relief sought in his habeas petition (a conditional writ of habeas corpus ordering release  
14 unless a bond hearing is provided) may only be granted if the Court concludes that his continued  
15 detention without a bond hearing violates due process. Dkt. 26 at 3–4.

16 The Court agrees with Petitioner’s analysis, which Respondents do not meaningfully  
17 contest. *See* Dkt. 27 at 4. “[T]he essence of habeas corpus is an attack by a person in custody  
18 upon the legality of that custody,” and “the traditional function of the writ is to secure release  
19 from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). “When a court issues a  
20 writ of habeas corpus, it declares in essence that the petitioner is being held in custody in  
21 violation of his constitutional (or other federal) rights.” *Harvest v. Castro*, 531 F.3d 737, 741  
22 (9th Cir. 2008). In modern habeas practice, courts often “employ a conditional order of release,”  
23 which orders the government to release the petitioner unless it “takes some remedial action” that  
24

1 corrects the constitutional violation. *Id.* at 741–42; *see also Rose v. Guyer*, 961 F.3d 1238, 1246  
2 (9th Cir. 2020) (describing procedure for enforcing conditional writ).

3       Petitioner is detained under the mandatory detention provisions of 8 U.S.C. § 1225(b).  
4 The statute itself does not include “a limit on prolonged detention or a requirement of individual  
5 bond hearings.” *Rodriguez v. Marin*, 909 F.3d 252, 255 (9th Cir. 2018) (citing *Jennings v.*  
6 *Rodriguez*, 583 U.S. 281 (2018)). But through *Banda*, courts in this district joined “the vast  
7 majority of other district courts to conclude that unreasonably prolonged detention under  
8 § 1225(b) without a bond hearing violates due process.” 385 F. Supp. 3d at 1117. Application of  
9 the *Banda* factors is thus used to determine when detention has become unconstitutionally  
10 prolonged; if a detainee is entitled to a bond hearing under *Banda*, it is because his continued  
11 detention without one—as the text of Section 1225(b) allows—violates due process. The  
12 conclusion of the R&R that Petitioner Khadaj must receive a bond hearing (a conclusion to  
13 which Respondents did not object) requires a conclusion that Section 1225(b) is unconstitutional  
14 as applied to the facts of his case. The Court therefore sustains Petitioner’s objection and  
15 declines to adopt the R&R on this point.

16       **C.       The bond hearing shall occur within 14 days.**

17       Finally, Petitioner objects to the R&R’s recommendation that the Court order a bond  
18 hearing to be held within 35 days rather than 14 as sought by the habeas petition. Dkt. 26 at 4–6;  
19 *see* Dkt. 25 at 11–12; Dkt. 1 at 25. The R&R tied this recommendation to the role that the length  
20 of Petitioner’s detention plays in determining whether due process requires a bond hearing,  
21 explaining: “If this recommendation is adopted, Petitioner will have been in custody for  
22 approximately 12–13 months depending upon the date a dispositive order is filed. The length of  
23 Petitioner’s detention of 12–13 months would fall within the length of detention other courts  
24 have recognized as calling for a bond hearing.” Dkt. 25 at 12. Respondents argue that the Court

1 should adopt the 35-day recommendation, but on the basis that because of the limited availability  
2 of interpreters, “the 35-day period is more reasonable for compliance.” Dkt. 27 at 4.

3 As the cases cited by both parties demonstrate, courts in this district typically require that  
4 bond hearings ordered as part of a conditional writ of habeas corpus occur within 14 to 30 days.  
5 This Court agrees with Petitioner’s argument that the time for compliance should be considered  
6 independently from whether the length of detention has become prolonged, and the Court should  
7 not order a longer compliance period to ensure a certain length of detention. And while the Court  
8 is sensitive to the difficulty of obtaining interpreters, the declaration submitted by Respondents  
9 in this case suggests that the difficulty for Petitioner Khadaj centered around determining the  
10 dialect he could best understand; since that question has now been answered, Respondents  
11 should be able to comply with the conditional writ in 14 days. *See* Dkt. 12 at 2–3. The Court  
12 therefore sustains Petitioner’s objection, declines to adopt the R&R on this point, and will order  
13 that Mr. Khadaj’s bond hearing shall occur within 14 days of this Order.

### 14 **III. CONCLUSION**

15 The Court SUSTAINS Petitioner’s objections to the R&R (Dkt. 26) as set forth above.  
16 The Court otherwise adopts the R&R, and ORDERS as follows:

- 17 1. Respondents’ motion to dismiss (Dkt. 11) is GRANTED IN PART as to the  
18 claims of Petitioners Cardozo, Boulhjar, Fernandes, and Belhaj, and DENIED IN  
19 PART as to the claims of Petitioner Khadaj.
- 20 2. The petition for writ of habeas corpus (Dkt. 1) filed by Mouloud Ben Khadaj is  
21 GRANTED.
- 22 3. Mr. Khadaj’s ongoing detention under 8 U.S.C. § 1225(b) without an  
23 individualized bond hearing violates the Due Process Clause of the Fifth  
24 Amendment to the United States Constitution.

