

DETAINED

The Honorable Kymberly K. Evanson
The Honorable S. Kate Vaughan

Kelly Vomacka
GIBBS HOUSTON PAUW
1000 Second Avenue, Suite 1600
Seattle, WA 98104
(206) 682-1080
kelly.vomacka@ghp-law.net

Attorney for Petitioner

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

MICHAEL HAILU MAMO,

Petitioner,

v.

PAMELA BONDI, *et al.*;

Respondents.

Case No.: 2:25-cv-2562-KKE-SKV

PETITIONER'S RESPONSE TO RETURN
(TRAVERSE)

Noted for consideration: January 12, 2026

PETITIONER'S RESPONSE TO RETURN

A. The government correctly argues that Mr. Mamo is detained under 8 U.S.C. § 1225(b), not 8 U.S.C. § 1226.

Petitioner must begin with a concession. His counsel stated in the petition that Mr. Mamo is detained under 8 U.S.C. § 1226. Dkt. 1, at 5. He is not. He is detained under 8 U.S.C. § 1225(b), as the government correctly argues. Dkt. 6, at 4-5. Mr. Mamo's counsel said this because, although Mr. Mamo was initially placed in expedited removal under 8 U.S.C. § 1225(b), he later went through normal removal proceedings. Counsel overlooked the fact that

1 detention in these circumstances continues under 8 U.S.C. § 1225(b) and does not change into
2 detention under 8 U.S.C. § 1226.

3 Despite this, the remainder of the petition and Due Process analysis remain
4 unchanged.

5
6 **B. The *Banda* factors require habeas relief.**

7 In this district and others, *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D.
8 Wash. 2019), governs detentions under 8 U.S.C. § 1225(b). *See e.g., Guatam v. Corr. Corp. of*
9 *Am.*, 2026 U.S. Dist. LEXIS 994, *9 (S.D. Cal. Jan. 5. 2026). *Banda* sets out a six-factor test to
10 determine whether detention under 8 U.S.C. § 1225(b) has become unreasonably prolonged, in
11 violation of Due Process.

12 The first *Banda* factor, “which is the most important factor,” is the length of detention.
13 *Banda v. Nielsen*, 385 F. Supp. 3d 1099, 1118 (W.D. Wash. 2019) (Report and
14 Recommendation). Mr. Mamo has been in custody for seven months, under conditions that are
15 worse than jail. He has not been in custody as long as others whose Due Process rights have
16 been violated, but even so Mr. Mamo’s detention is unconstitutionally prolonged. At least one
17 court has recently found that 10 months is unconstitutional, *Cardozo v. Bostock*, 2025 U.S.
18 Dist. LEXIS 175989, *15 (W.D. Wash. Aug. 29, 2025), and courts have not said that anything
19 less is *per se* constitutional. Many people who have done time, whether in the civil or criminal
20 systems, would describe one night as an eternity, much less seven months. Mr. Mamo is not
21 convicted or even accused of any crime, and he has been granted asylum. The first *Banda*
22 factor, especially in connection with the other factors, weighs in favor of Mr. Mamo.

1 The second *Banda* factor is how long the detention is likely to continue. Nobody knows.
 2 The Board of Immigration Appeals (BIA) has yet to issue a briefing schedule, although the
 3 appeal was filed two months ago. From the time the schedule is issued, the briefing will likely
 4 take about two months. Then, once briefing is complete, the current processing time for a
 5 detained BIA appeal is about six months, and it can go much longer.¹ Depending on the
 6 outcome, a party might petition for review in the Ninth Circuit. The petition itself will likely
 7 take months to decide, and any review might take years. Therefore, no one can say how long
 8 the detention is likely to continue, although it is likely to be at least several months awaiting
 9 the BIA process. This factor therefore weighs strongly in Mr. Mamo's favor.

10 The third factor is the conditions of detention. "The more that the conditions under
 11 which the [noncitizen] is held resemble penal confinement, the stronger his argument that he is
 12 entitled to a bond hearing." *Banda*, 385 F. Supp. 3d at 1119 (citations omitted). Evidence in
 13 support of this factor need not be restricted to the petitioner's firsthand account. *Calderon v.*
 14 *Bostock*, 2025 U.S. Dist. LEXIS 52849, *11 (W.D. Wash. March 21, 2025). The conditions a
 15 court may consider are "the lack of privacy, programming, and health and safety
 16 considerations," although this list is not exclusive. *Calderon*, at 12. To show how the
 17 conditions of confinement at the Northwest ICE Processing Center (NWIPC) compare to penal
 18 confinement, Mamo relies on the ICE Detainee Handbook. *Available at*,
 19 <https://www.ice.gov/doclib/detention/ndHandbook/ndhEnglish.pdf>. In particular, he relies on
 20 the following portions:

- 21 • Punitive discipline (page 25-26), including solitary confinement (page 17) and
 22 collective punishment (page 23)

23 ¹ The government does not publish processing times for the BIA. This estimate is based on recent observations for detained BIA appeals.

- 1 • Searches of body and property, including strip searches (page 24)
- 2 • Restrictions on privacy (p24)
- 3 • Searches of mail (page 14)
- 4 • Restrictions on food (pages 18-19)
- 5 • Restrictions on clothing and grooming (page 21-22)
- 6 • No smoking (page 27)
- 7 • Limited recreation time (page 19). The minimum time is less than that required for the Bureau of Prisons. 28 CFR § 551.115.

7 While Mr. Mamo has been detained, at least three courts have found that conditions at the
8 NWIPC are sufficiently penal that this factor favored that petitioner. *Scott v. Wamsley*, 2025
9 U.S. Dist. LEXIS 253288, *25 (W.D. Wash. Dec. 8, 2025); *Belqasim v. Bostock*, 2025 U.S.
10 Dist. LEXIS 224772, *24 (W.D. Wash. Oct. 18, 2025); *Maliwat v. Scott*, 2025 U.S. Dist.
11 LEXIS 152663, *15 (W.D. Wash. Aug. 7, 2025). This factor also favors Mr. Mamo.

12 The fourth and fifth factors are delays caused by Mr. Mamo or the government. Neither
13 party has caused delays, as the government agrees. Dkt. 6, at 7. These factors are neutral.

14 The sixth *Banda* factor is the likelihood that the removal proceedings will result in a
15 final order of removal. Although the outcome of the pending appeal is unknown, the likelihood
16 of a final removal order can be assessed, and it is low. Mr. Mamo has won asylum. The
17 government has appealed, challenging only credibility. Dkt. 1-3, at 10. The standard of review
18 is “clearly erroneous,” which is deferential. 8 C.F.R. § 1003.1(d)(3)(i); *Rodriguez v. Holder*,
19 683 F.3d 1164, 1177 (9th Cir. 2012). One court has found that “even greater deference” is
20 owed to a credibility finding, “for only the [factfinder] can be aware of the variations in
21 demeanor and tone of voice that bear so heavily on the listener’s understanding of and belief in
22 what is said[.]” *Alimbaev v. AG of the United States*, 872 F.3d 188, 195 (3rd Cir. 2017)
23 (quoting *Anderson v. City of Bessemer*, 470 U.S. 564, 575 (1985)). Given this standard of

1 review, the government faces substantial obstacles on appeal, and the likelihood of the appeal
2 ultimately resulting in a final order of removal is low. Therefore, this factor weighs in favor of
3 Mr. Mamo.

4
5 **C. Conclusion.**

6 Mr. Mamo is detained under 8 U.S.C. § 1225(b). He has suffered seven months in
7 detention, with at least several more months yet to come, for unknown duration, in
8 penal-like conditions, with only a low likelihood of an ultimate removal order. Although
9 the government has caused no delay, neither has Mr. Mamo. For all these reasons, the
10 *Banda* factors weigh in Mr. Mamo's favor. Therefore, his detention has become
11 prolonged and in violation of Due Process. Mr. Mamo asks this Court to grant the relief
12 in his petition, including a bond hearing in Immigration Court.

13
14 I certify that this memorandum contains 1,114 words, in compliance with the Local Civil Rules.

15 Dated this 7th day of January, 2026.

16 /s/ Kelly Vomacka

17 Kelly Vomacka, WSBA 20090
18 GIBBS HOUSTON PAUW
19 1000 Second Avenue, Suite 1600
20 Seattle, WA 98104
21 (206) 682-1080
22 kelly.vomacka@ghp-law.net

23 *Attorney for Petitioner*