

THE HONORABLE KYMBERLY K. EVANSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AZAD RAHMANI,	)	No. CV26-362-KKE
Petitioner,	)	
v.	)	REPLY TO FEDERAL
	)	RESPONDENTS' RETURN
PAMELA BONDI, Attorney General of	)	MEMORANDUM
the United States, et al.,	)	
Respondents.	)	

I. MR. RAHMANI IS ENTITLED TO A BOND HEARING.

Mr. Rahmani assumes, for purposes of this Reply, that Respondents are correct in asserting that he is detained pursuant to 8 U.S.C. § 1225(b). However, while Respondents characterize detention under this provision as “mandatory,” in fact, “nearly all district courts that have considered the issue agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process.” *Mohamed v. ICE*, No. 2:26-CV-00181-TL, 2026 WL 497096, at *3 (W.D. Wash. Feb. 23, 2026) (quoting *Maliwat v. Scott*, No. CV25-788, 2025 WL 2256711, at *3 (W.D. Wash. Aug. 7, 2025), in turn quoting *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1116 (W.D. Wash. 2019)).

“[T]he standard courts in this Circuit has used for determining whether prolonged detention under § 1225(b) has become unconstitutional [is] a [six]-part test created in *Banda*[.]” *Mohamed*, 2026 WL 497096, at *2. These are:

(1) the total length of detention to date; (2) the likely duration of future detention; (3) the conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal.

Banda, 385 F. Supp. 3d at 1117.¹ As the following discussion shows, some of these factors heavily favor Mr. Rahmani; the rest either favor him or are neutral. He thus is entitled to a bond hearing.

A. The length of detention to date favors Mr. Rahmani.

Mr. Rahmani has been detained for more than seven months, since July 16, 2025. Courts have found that comparable (or even shorter) periods required a bond hearing. *See Cabral v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (finding detention to be unreasonably prolonged at seven months); *Vargas v. Beth*, 378 F. Supp. 3d 716, 727 (E.D. Wis. 2019) (same at about nine-and-a-half months). “Detention that has lasted longer than six months is more likely to be ‘unreasonable’, and thus contrary to due process, than detention of less than six months.” *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1098 (W.D. Wash. 2025) (cleaned up).

This factor weighs in Mr. Rahman’s favor.

B. The likely duration of future detention heavily favors Mr. Rahmani.

On top of the seven months of detention to date, Mr. Rahman’s future detention is likely to be significant. “Courts in this District have observed that BIA appeals can

¹ A similar test has been applied by courts in this district to detention under 8 U.S.C. § 1226(c). *Martinez v. Clark*, 18-cv-1669, 2019 WL 5968089 (W.D. Wash. May 23, 2019), *report and recommendation adopted by* 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019). The *Martinez* test considers some additional factors, but “the analysis under each factor is the same regardless of whether it is in the context of the six-factor *Banda* test or all eight *Martinez* factors.” *Hong v. Mayorkas*, CV20-1784-LK, 2022 WL 1078627, at *4 (W.D. Wash. Apr. 11, 2022), *appeal dismissed sub nom. Yang v. Mayorkas*, No. 22-35458, 2022 WL 4127534 (9th Cir. Sept. 6, 2022). Mr. Rahmani will therefore cite to cases applying either *Banda* or *Martinez*, to the extent they address the factors of the *Banda* test that is applicable here.

1 take over six months.” *Joshi v. Wamsley*, No. 2:26-CV-00148-TLF, 2026 WL 456822,
 2 at *5 (W.D. Wash. Feb. 18, 2026) (citing *Nguyen v. Scott*, C25-1988-SKV, Dkt. 15 at
 3 3–4, and *Toktosunov v. Wamsley*, 25-cv-1724-TL, 2025 WL 3492858, at *5 (W.D.
 4 Wash. Dec. 5, 2025)).

5 If Mr. Rahman’s BIA appeal is denied, he has the right to appeal to the Ninth
 6 Circuit. “According to the Ninth Circuit’s public website, it takes approximately 6 to 12
 7 months from the date of the notice of appeal to oral argument and, following argument,
 8 most cases take three months to a year for the Court of Appeals to decide the case.”
 9 *Joshi*, 2026 WL 456822, at *5 (citing U.S. Court of Appeals for the Ninth Circuit,
 10 Frequently Asked Questions, www.ca9.uscourts.gov/content/faq.php); *Banda*, 385 F.
 11 Supp. 3d at 1119 (finding this factor weighed in petitioner’s favor where petitioner—
 12 who had “only recently” appealed the IJ’s denial of his case to the BIA—faced a
 13 process that could “take up to two years or longer”); *Hong v. Mayorkas*, 2:20-cv-1784-
 14 RAJ-TLF, 2021 WL 8016749, at *4 (W.D. Wash. June 8, 2021) (finding this factor
 15 favored petitioner where he faced “an additional 15 to 38 months” in detention because
 16 he was at the “earliest stages” of pursuing a petition for review before the Court of
 17 Appeals).

18 This factor strongly favors Mr. Rahmani.

19 Furthermore, assuming the order of removal does become final, Mr. Rahmani’s
 20 detention would likely last far longer. The government has listed Iran as one of only
 21 fifteen countries it deems “uncooperative,” based on such factors as whether it will
 22 “issu[e] travel documents in a timely manner, [or] accept[] the physical return of their
 23 nationals by scheduled commercial or charter flights consistent with ICE and/or foreign
 24 government removal guidelines.” Dkts. 5; 5-1. While Iran apparently conducted an
 25 interview with Mr. Rahmani, dkt. 9, ¶¶ 24–25, Respondents’ submission does not
 26 indicate that Iran’s overall uncooperative posture has changed. Thus, there is every

1 reason to believe that, even after a final order of removal, Mr. Rahmani would continue
2 to languish in detention for a significant additional period.

3 **C. The conditions of confinement heavily favor Mr. Rahmani.**

4 “The more that the conditions under which the noncitizen is being held resemble
5 penal confinement, the stronger the argument that he is entitled to a bond hearing.”
6 *Joshi*, 2026 WL 456822, at *5 (quoting *Barraza v. ICE Field Off. Dir.*, No. CV23-
7 1271-BHS-MLP, 2023 WL 9600946, at *6 (W.D. Wash. Dec. 8, 2023), *report and*
8 *recommendation adopted sub nom. Barraza v. United States Immigr. & Customs Enf’t*
9 *Field Off. Dir.*, 2024 WL 518945 (W.D. Wash. Feb. 9, 2024)). “A claim for punitive
10 detention requires a comparison of the conditions under which civil and criminal
11 detainees are held.” *Id.* (cleaned up) (quoting *Ibarra-Perez v. Howard*, 468 F. Supp. 3d
12 1156, 1173 (D. Ariz. 2020)).

13 The conditions at NWIPC are no better than those at many penal institutions.
14 Indeed, courts in this district have regularly found that the situation at NWIPC “weighs
15 heavily” in favor of the petitioner. *Joshi*, 2026 WL 456822, at *6. That is because
16 conditions at NWIPC “are similar to those in many prisons and jails[.]” *Katlong v.*
17 *Barr*, No. CV20-0846-RSL-MAT, 2020 WL 7048530, at *4 (W.D. Wash. Oct. 30,
18 2020), *report and recommendation adopted*, No. CV20-0846-RSL-MAT, 2020 WL
19 7043580 (W.D. Wash. Dec. 1, 2020). Conclusions such as *Katlong*’s are not based on
20 detainees’ comments alone—“a copy of the NWIPC Detainee Handbook, . . . reinforces
21 [petitioner’s] allegations that restrictions placed on his movements and conduct at
22 NWIPC are similar to those restrictions imposed in penal institutions.” *Anyanwu v.*
23 *United States Immigr. & Customs Enf’t Field Off. Dir.*, No. 2:24-CV-00964-LK-GJL,
24 2024 WL 4627343, at *6 (W.D. Wash. Sept. 17, 2024), *report and recommendation*
25 *adopted sub nom. Anyanwu v. ICE Field Off. Dir.*, No. C24-0964 TSZ, 2024 WL
26 4626381 (W.D. Wash. Oct. 30, 2024). *See also Odimara v. Bostock*, No. 2:24-CV-

01412-MJP-TLF, 2025 WL 1490395, at *8 (W.D. Wash. Mar. 27, 2025), *report and recommendation adopted*, No. CV24-1412 MJP, 2025 WL 1489705 (W.D. Wash. May 23, 2025) (reviewing findings of *Katlong*, *supra*, and of *Ashemuke*, *infra*, and other evidence regarding NWIPC and finding this factor weighs in petitioner’s favor); *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1104 (W.D. Wash. 2025) (reviewing findings of *Katlong* and other evidence regarding NWIPC and finding this factor weighs in petitioner’s favor); *Ashemuke v. ICE Field Off. Dir.*, No. CV23-1592-RSL, 2024 WL 1676681, at *1 (W.D. Wash. Apr. 18, 2024) (finding, without elaboration, that conditions of confinement at NWIPC weighed in favor of petitioner); *Diaz Reyes v. Wolf*, No. CV20-0377-JLR-MAT, 2020 WL 6820903, at *7 (W.D. Wash. Aug. 7, 2020), *report and recommendation adopted as modified*, No. CV20-0377JLR, 2020 WL 6820822 (W.D. Wash. Nov. 20, 2020) (concluding that conditions at NWIPC are “similar to those in many prisons and jails.”) (cleaned up).

This factor, too, “heavily” favors Mr. Rahmani. *See Joshi*, 2026 WL 456822, at *6.

D. The delays caused by the parties are neutral factors.

The fourth and fifth *Banda* factors are the delays in the removal proceedings caused by the petitioner and the government. Delay caused by a detainee “only weighs against a petitioner when he has substantially prolonged his stay by abusing the processes provided but not when he simply made use of the statutorily permitted appeals process.” *Odinara*, 2025 WL 1490395, at *8 (cleaned up) (quoting *Hechavarria v. Sessions*, 891 F.3d 49, 56 n.6 (2d Cir. 2018)).

There is nothing in the record indicating the reasons for the various delays between the September 26, 2023, Notice to Appear and the May 24, 2024, sustaining of the charge of removability. Dkt. 9, ¶¶ 5–9. Mr. Rahmani promptly filed an Application for Asylum and Withholding of Removal on May 31, 2024. Dkt. 9, ¶ 11; ¶ 10.

1 Similarly, there is nothing showing the reasons for delay between that date and the
 2 order of removal. *Id.*, ¶¶ 11–13. Thus, none of these delays can be attributed to either
 3 party.

4 After Mr. Rahmani was arrested, he filed a Motion to Reopen on October 9,
 5 2025. *Id.*, ¶ 16. Given the presumed difficulties in filing *pro se* when in custody, this
 6 short delay should count very little against him, if at all. That motion was denied twelve
 7 days later, October 17, 2025, based on his failure to pay a filing fee. *Id.* He promptly
 8 filed a motion for a fee waiver, just five days later, on October 22, 2025, which was
 9 denied the next day. *Id.*, ¶¶ 17–18. That same day he paid the fee. *Id.*, ¶ 18. The Motion
 10 to Reopen was denied a few weeks later, November 10, 2025, and he filed an appeal
 11 shortly thereafter, December 9, 2025. *Id.*, ¶¶ 19–21.

12 In sum, the record does not show undue delay on either party’s part and these
 13 two factors should be deemed neutral.

14 **E. The final factor—likelihood that the removal proceedings will result**
 15 **in a final order of removal—is neutral.**

16 Under this factor, “[t]he Court . . . considers whether the petitioner has asserted
 17 any defenses to removal.” *Nguyen v. Scott*, No. CV25-1988-SKV, 2026 WL 194232, at
 18 *4 (W.D. Wash. Jan. 26, 2026).

19 Where a noncitizen has not asserted any grounds for relief from removal,
 20 presumably the noncitizen will be removed from the United States, and
 21 continued detention will at least marginally serve the purpose of
 22 detention, namely assuring the noncitizen is removed as ordered. But
 where a noncitizen has asserted a good faith challenge to removal, the
 categorical nature of the detention will become increasingly unreasonable.

23 *Banda*, 385 F. Supp. 3d at 1120 (cleaned up).

24 Mr. Rahmani has asserted good faith challenges to removal. However, he
 25 acknowledges that this Court should find this factor neutral. *See Joshi*, 2026 WL
 26 456822, at *7 (finding this factor neutral because “[t]he Court lacks enough information

and declines to opine on the potential merits of petitioner's claims and defenses in his removal proceedings or on the outcome of any appeal to the BIA, or any potential subsequent appeal to the Ninth Circuit"); *Nguyen*, 2026 WL 194232, at *4 (finding this factor neutral where "Petitioner has applied for various forms of relief and was denied. He is presently litigating his appeal. The Court is not presently positioned to determine whether his appeal is nonfrivolous or the likelihood that he will prevail.").

F. The *Banda* factors support this Court requiring a bond hearing.

Two of the *Banda* factors heavily favor Mr. Rahmani (duration of future detention and conditions of confinement), one favors him (length of detention to date), and three are neutral (delay by the parties, likelihood of a final order of removal). None favors Respondents. Thus, this Court should order a bond hearing.

G. The appropriate remedy is a bond hearing at which the government bears a clear and convincing burden.

As dozens of cases from this district have held, the appropriate remedy is a bond hearing where Respondents bear the burden of proof by clear and convincing evidence. *See, e.g., Joshi*, 2026 WL 456822, at *8 (citing *Banda*, 385 F. Supp. 3d at 1107). For example, in *Joshi* the court ordered:

1. The bond hearing shall comport with the procedural requirements of *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011) – there must be a contemporaneous record of the hearing, and the Government bears the burden of proving by clear and convincing evidence that petitioner is a flight risk or danger to the community;
2. The Immigration Judge shall allow petitioner to present evidence of financial circumstances or alternative conditions of release that would mitigate any potential dangerousness or risk of flight;
3. Or, in the alternative, the Government shall immediately release petitioner under appropriate conditions of release.

Id.

1 Courts have differed in how quickly the bond hearing must occur. In *Joshi* it was
2 seven days. *Id.* Some courts have allowed fourteen days. *Nguyen*, 2026 WL 194232, at
3 *5. Mr. Rahmani submits that seven days is appropriate.

4 DATED this 26th day of February 2026.

5 Respectfully submitted,

6
7 *s/ Dennis Carroll*
8 Assistant Federal Public Defender
9 Attorney for Petitioner Azad Rahmani
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