The Honorable Jamal N. Whitehead

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Naveen KUMAR,

Petitioner,

v.

Laura HERMOSILLO, et al.,

Respondents.

Case No. 2:26-cv-00389-JNW

PETITIONER'S TRAVERSE

Noting Date: February 23, 2026

INTRODUCTION

Nearly five months ago, Mr. Kumar was afforded protection from deportation by an immigration judge due to "the horrific persecution and violence inflicted upon [him] in India on account of his status as [redacted]" *Kumar v. Wamsley*, No. C25-2055-KKE, 2025 WL 3204724, at *5 (W.D. Wash. Nov. 17, 2025). Yet he remains in immigration detention because Respondents insist on deporting him to a third country—even as Mr. Kumar has also demonstrated entitlement to protection from deportation to Uganda, the third country Respondents have selected. *See* Dkt. 1 ¶ 38; Dkt. 9 ¶ 15. But Respondents' attempts to remove

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Mr. Kumar to a third country do not permit them to hold Mr. Kumar in mandatory detention in violation of his due process rights. As Mr. Kumar has demonstrated—and Respondents do not meaningfully contest—his detention has become unconstitutionally prolonged. This Court should accordingly grant Mr. Kumar's petition and order that Respondents provide him with a bond hearing where the government must prove that any continued detention is justified by clear and convincing evidence.

ARGUMENT

Respondents have not rebutted Mr. Kumar's showing that an analysis of the six factors in *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019), establishes his continued detention without a bond hearing violates his right to due process under the Fifth Amendment. *See* Dkt. 1 ¶¶ 63–71.

Even taking Respondents' return at face value, the *Banda* factors favor Mr. Kumar. Respondents argue Mr. Kumar's confinement is "[c]onsistent with the requirements of due process," Dkt. 8 at 4, but they do not dispute that the length of detention to date (the first factor), the conditions of detention (the third factor), and delays in removal proceedings caused by the noncitizen (the fourth factor) all favor Mr. Kumar, *see id.* at 4–5. They also acknowledge that their attempts to remove him to a third country have resulted in "some delays," showing that the fifth factor (government-caused delay) also favors Mr. Kumar. *Id.* at 5; *see also* Dkt. 1 ¶ 69.[1] Accordingly, on the face of Respondents' return, four of the six relevant factors—including the

[1] While Respondents disavow that any delays on their part have been intentional, their intention is immaterial where the delays are attributable to their actions. *See, e.g.*, *Chekhovskii v. Scott*, No. 2:25-CV-02550-TLF, 2026 WL 353265, at *5 (W.D. Wash. Feb. 9, 2026) ("Even if not the result of intentional action on behalf of government officials, these delays are attributable to the Government." (citation modified)); *Cardozo v. Bostock*, No. 2:25-CV-00871-TMC, 2025 WL 2592275, at *1 (W.D. Wash. Sept. 8, 2025) (attributing delay in finding an interpreter to the government); *Banda*, 385 F. Supp. 3d at 1120 (same, noting this factor weighs in favor of the noncitizen "where the fault is attributable to some entity other than the [noncitizen]").

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"length of detention, which is the most important factor," *Banda*, 385 F. Supp. 3d at 1118—favor Mr. Kumar, demonstrating his detention has become unconstitutionally prolonged and warranting a grant of his petition.

However, all six factors actually weigh in Mr. Kumar's favor. With respect to the second factor—the likely duration of future detention—Respondents argue that "it is premature to speculate on whether there will be appeals that would extend detention." Dkt. 8 at 5. But Mr. Kumar faces further prolonged detention regardless of whether there are any appeals in his case. Assuming that Mr. Kumar's reopened proceedings are concluded within four months, as was the case with his prior removal proceedings, *see id.* at 4–5, that would mean his reopened proceedings would conclude around May. By then he will have already been detained for more than a year, as he was first detained on April 15, 2025. Dkt. 1 ¶ 24; Dkt. 8 at 2.

Courts have found that similarly lengthy detention warrants granting noncitizens a bond hearing. *See* Dkt. 1 ¶ 66 (listing cases); *see also, e.g.*, *Alvarado v. Garland*, 608 F. Supp. 3d 32, 38 & n.4 (W.D.N.Y. 2022) (collecting cases where courts found that detention ranging from seven to more than ten months had become "unreasonably prolonged"); *Hylton v. Decker*, 502 F. Supp. 3d 848, 854 (S.D.N.Y. 2020) (discussing cases where detention was found to be unreasonably prolonged at eight months and at more than nine months); *Vargas v. Beth*, 378 F. Supp. 3d 716, 727 (E.D. Wis. 2019) (finding detention to be unreasonably prolonged at about nine-and-a-half months); *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 720 (D. Md. 2016) (same, where "detention [was] now exceeding ten months"); *Ashemuke v. ICE Field Off. Dir.*, No. C23-1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D. Wash. Feb. 29, 2024) (recommending denial of request for bond hearing, but finding that seven months' detention at the time of filing the habeas petition, which had extended to approximately eleven months, "weighs in Petitioner's favor"),

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R&R rejected & petition granted, No. C23-1592-RSL, 2024 WL 1676681 (W.D. Wash. Apr. 18, 2024); *Anyanwu v. ICE Field Off. Dir.*, No. 2:24-CV-00964-LK-GJL, 2024 WL 4627343, at *4 (W.D. Wash. Sept. 17, 2024) (noting even seven months' detention "would still tilt [this factor of the analysis] in [petitioner's] favor"), *R&R adopted*, No. C24-0964 TSZ, 2024 WL 4626381 (W.D. Wash. Oct. 30, 2024).

Moreover, even if Mr. Kumar is granted protection from deportation to Uganda or another third country, Respondents may continue to hold him in detention while they pursue removal to a different third country or even appeal the grant of protection.[2] *See, e.g.*, *Toktosunov v. Wamsley*, No. 2:25-CV-1724-TL, 2025 WL 3492858, at *1–2 (W.D. Wash. Dec. 5, 2025) (petitioner held in immigration detention while the government appealed the immigration judge's grant of asylum). And if Mr. Kumar loses his claim for protection, he has indicated his intention to continue fighting his case given his fear of persecution and harm on account of his status as a [redacted] Dkt. 2 ¶ 27. Adjudication of appeals by the Board of Immigration Appeals (BIA) "take[s] over six months," *id.* at *5, and adjudication of a petition for review of a BIA decision may take between nine months to two additional years before the Ninth Circuit, *see* U.S. Court of Appeals for the Ninth Circuit, Frequently Asked Questions, at Questions 17 & 18, https://www.ca9.uscourts.gov/general/faq/ (last visited Feb. 19, 2026) (on file with Petitioner's counsel).

[2] Mr. Kumar was granted a writ of habeas corpus ensuring Respondents must provide him with the opportunity to apply for protection from removal before removing him to any third country, but this does not limit Respondents' ability to designate as many third countries as they would like. *See Kumar*, 2025 WL 3204724, at *9. And, in fact, their third-country removal policy allows them to "designate a different country of removal" where a noncitizen shows they "likely qualif[y] for protection" to a country Respondents have already selected. *Id.* at *2.

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In light of this information, it is not speculative to estimate that Mr. Kumar faces the prospect of significant additional detention. *See, e.g.*, *Toktosunov*, 2025 WL 3492858, at *5. Because "it appears likely he will face many more months and potentially years in detention," this factor weighs in Mr. Kumar's favor. *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1098 (W.D. Wash. 2025); *see also, e.g.*, *L.B.O.M. v. Hermosillo*, No. 2:25-CV-02695-GJL, 2026 WL 266068, at *5 (W.D. Wash. Feb. 2, 2026) (finding this factor favored petitioner where her removal proceedings were stayed but "she [could] exhaust the appeals process if she is ordered to be removed" and that "process can take up to two years"); *Djelassi v. ICE Field Off. Dir.*, 434 F. Supp. 3d 917, 922 (W.D. Wash. 2020) (finding no error in assessing that this factor weighed in petitioner's favor where resolution of his case might "reasonably take another year or longer"). Accordingly, the second *Banda* factor weighs in favor of Mr. Kumar.

With respect to the sixth *Banda* factor—the likelihood that removal proceedings will result in a final order of removal—Respondents err in equating an order of removal with not being "granted status in the United States." Dkt. 8 at 5. In fact, Mr. Kumar already received withholding of removal to India in his prior removal proceedings, Dkt. 3-2, meaning that he *was* granted a form of lawful immigration status, *see* 8 C.F.R. § 274a.12(a)(10) (recognizing withholding of removal as a type of immigration status that entitles individuals to employment authorization). He currently seeks similar protection from deportation to Uganda. Dkt. 1 ¶¶ 40–46. The likelihood of him receiving that protection is not speculative given that he has already demonstrated to a Department of Homeland Security (DHS) asylum officer that "it is more likely than not that [he] will be persecuted in Uganda." Dkt. 3-4. That is the same standard as what is necessary to demonstrate full entitlement to withholding of removal under the Immigration and

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Nationality Act. *INS v. Aguirre-Aguirre*, 526 U.S. 415, 419 (1999).[3] Accordingly, given that he has twice demonstrated an entitlement to withholding of removal, the sixth *Banda* factor weighs in his favor. *See Banda*, 385 F. Supp. 3d at 1120 (explaining that "where a noncitizen has asserted a good faith challenge to removal, the categorical nature of the detention will become increasingly unreasonable" (citation modified)).

In sum, all six *Banda* factors favor Mr. Kumar and demonstrate that his detention has become unconstitutionally prolonged. Notably, Respondents do not challenge Mr. Kumar's request that, should this Court order that he be provided a bond hearing, that it order that Respondents afford him certain minimum procedures during that hearing. Dkt. 1 ¶¶ 77–88. Accordingly, Mr. Kumar respectfully requests that this Court order that, at his bond hearing, the government be required to establish by clear and convincing evidence that he presents a flight risk or danger to the community and that no alternative to detention can mitigate any risk that his release would present. The Court should further order that if the government cannot meet its burden, Mr. Kumar should be released on appropriate conditions of supervision, taking into account his ability to pay a bond.

CONCLUSION

For these reasons, Mr. Kumar respectfully asks that the Court grant his petition.

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[3] Contrary to the suggestion that he first claimed a fear of removal to Uganda on October 27, 2025, after filing his habeas petition, Dkt. 9 ¶ 13, Mr. Kumar expressed that fear upon being initially informed of Respondents' intent to remove him there, Dkt. 2 ¶ 12; *see also Kumar*, 2025 WL 3204724, at *4 (court noting that the DHS officer "does not dispute" Mr. Kumar's initial assertion of fear).

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Submitted this 20th day of February, 2026.

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I certify this reply contains 1763 words in compliance with the Local Civil Rules.