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8  
9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 **Abdoul Rahimy Bah,**

12 *Petitioner,*

13 v.

14 **Patrick Divver, Field Office Director of**  
15 **Enforcement and Removal Operations, San Diego**  
16 **Field Office, Immigration and Customs**  
17 **Enforcement; Jeremy Casey, Facility**  
18 **Administrator, Imperial Regional Detention**  
19 **Facility,**

20 *Respondents.*

21 **PETITION FOR A WRIT OF**  
22 **HABEAS CORPUS**

23 **Case No. '26CV1453 BAS DDL**

24 **INTRODUCTION**

25 1. Petitioner Abdoul Rahimy Bah (“Mr. Bah” or “Petitioner”), a 21-year-old citizen of  
26 Guinea, has been detained in Immigration and Customs Enforcement (ICE) custody since entering  
27 the United States on December 13, 2024. Mr. Bah’s Form I-589 Application for Asylum and for  
28 Withholding of Removal was denied by an Immigration Judge on August 18, 2025. Petitioner filed a  
timely appeal of the decision, and the appeal remains pending at this time. Mr. Bah petitions this  
Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 to remedy his unlawful detention by  
Respondents.



PARTIES

1  
2 10. Petitioner Abdoul Rahimy Bah is a native and citizen of Guinea who has been in ICE  
3 custody since December 13, 2024.

4 11. Respondent Patrick Divver is the Acting Director of the San Diego Field Office of  
5 ICE's Enforcement and Removal Operations division. As such, Respondent Divver is Petitioner's  
6 immediate custodian and is responsible for Petitioner's detention and removal. He is named in his  
7 official capacity.

8 12. Respondent Jeremy Casey is employed as the Facility Administrator of the Imperial  
9 Regional Adult Detention Facility, where Petitioner is detained. He has immediate physical custody  
10 of Petitioner. He is sued in his official capacity.

STATEMENT OF FACTS

11 13. Mr. Bah entered the United States near Calexico, California on or about December 13,  
12 2024, where he encountered government officials and was detained.

13 14. Petitioner remains in detention, at the Imperial Regional Adult Detention Facility.

14 15. Mr. Bah has been detained throughout his removal proceedings before the Executive  
15 Office for Immigration Review ("EOIR"). Mr. Bah filed Form I-589 Application for Asylum and  
16 Withholding of Removal on June 13, 2025. The basis of Mr. Bah's claim for relief is that he was  
17 persecuted in Guinea because he is a member of the [REDACTED] ethnic group, in addition to a  
18 supporter of the [REDACTED]

19 16. Mr. Bah asserted that, because of both his ethnicity and his support for the [REDACTED] he  
20 was persecuted in Guinea. Specifically, Mr. Bah presented testimony and evidence establishing that  
21 he was targeted by police officers after attending a protest as part of [REDACTED] support group. Mr. Bah  
22 was shot with tear gas and imprisoned for over a month, during which time he was beaten,  
23 malnourished, denied medical treatment, and threatened with death. Mr. Bah was released but  
24 detained again in February of 2024 for similar reasons, and held in confinement for nearly seven (7)

1 months. Mr. Bah committed to escaping Guinea once he was released, because he truly believed he  
2 would not be able to live freely in Guinea due to his ethnicity and political affiliations.

3 17. On August 18, 2025, Mr. Bah's application for relief was denied in its entirety by an  
4 Immigration Judge. Mr. Bah filed a timely appeal of the Immigration Judge's decision, and the appeal  
5 remains pending with the Board of Immigration Appeals ("BIA"). Mr. Bah remains in detention while  
6 awaiting the outcome of his appeal with the BIA.  
7

### 8 LEGAL BACKGROUND

9 18. Two principal sections of the U.S. Code govern the detention of non-citizens: 8 U.S.C.  
10 § 1226 and § 1225(b).<sup>1</sup>

11 19. Section 1226 governs the detention of non-citizens "pending a decision on whether the  
12 alien is to be removed from the United States." 8 U.S.C. § 1226(a). Non-citizens detained under §  
13 1226(a) are eligible for bond, whereas those with certain criminal convictions are subject to  
14 mandatory detention without bond under § 1226(c).  
15

16 20. The INA provides for mandatory detention of noncitizens subject to expedited removal  
17 under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under §  
18 1225(b)(2).

19 21. Section 1225(b) of the INA establishes mandatory detention for aliens who are actively  
20 seeking admission at or near the border during expedited removal and credible fear processes.  
21

22 22. For other applicants for admission, if an examining immigration officer determines  
23 that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien  
24 shall be detained for a proceeding under 8 U.S.C. § 1229a.  
25  
26  
27

28 <sup>1</sup> Another provision not relevant here, 8 U.S.C. § 1231, governs the detention of non-citizens "during"  
and "beyond" the "removal period."

1           23.     The Supreme Court's decision in *Jennings v Rodriguez* fundamentally reshaped the  
2 landscape for prolonged detention challenges by rejecting statutory interpretations that would limit  
3 detention authority. 138 S. Ct. 830 (2018). The Court held that immigration detention statutes do not  
4 contain implicit time limits or require periodic bond hearings as a matter of statutory interpretation.  
5  
6 *Id.* However, the Court explicitly remanded constitutional challenges for consideration on their  
7 merits, stating that "the Court of Appeals erroneously concluded that periodic bond hearings are  
8 required under the immigration provisions at issue here, it had no occasion to consider respondents'  
9 constitutional arguments on their merits." *Id.* at 851.

10           24.     Following this remand, the 9th Circuit expressed "grave doubts that any statute that  
11 allows for arbitrary prolonged detention without any process is constitutional or that those who  
12 founded our democracy precisely to protect against the government's arbitrary deprivation of liberty  
13 would have thought so." *Rodriguez v Marin*, 909 F.3d 252, 256 (9th Cir. 2018). This statement has  
14 become foundational for subsequent district court decisions finding constitutional violations in  
15 prolonged detention cases.  
16

17           25.     The constitutional analysis for prolonged detention draws from the Supreme Court's  
18 decision in *Zadvydas v. Davis*, which held that indefinite detention raises serious constitutional  
19 problems under the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678 (2001). However, *Zadvydas*  
20 explicitly distinguished between aliens who have entered the United States (like the petitioners in that  
21 case) and arriving aliens who have never effected entry, noting that arriving aliens "would present a  
22 very different question."  
23

24           26.     District courts within the 9th Circuit have nevertheless applied constitutional  
25 principles against indefinite detention to pre-final order detention contexts, reasoning that prolonged  
26 detention triggers constitutional protections regardless of entry status.  
27

28           27.     The leading case establishing due process protections for arriving aliens is *Banda v*  
*McAleenan*, 385 F.Supp.3d 1099 (9<sup>th</sup> Cir. 2019). The court held that "unreasonably prolonged

1 detention of an unadmitted alien arriving in the United States without a bond hearing violates due  
2 process." *Id* at 1117.

3 28. The decision established a six-factor test for analyzing when detention becomes  
4 constitutionally impermissible: (1) length of detention, (2) anticipated duration of future detention,  
5 (3) conditions of detention, (4) delays in removal proceedings caused by the detainee, (5) delays  
6 caused by the government, and (6) likelihood that proceedings will culminate in a final removal order.  
7 *Id* at 1118.

9 29. The *Banda* factors have become the dominant analytical framework in 9th Circuit  
10 district courts. Courts have consistently found that length of detention is "the most important factor"  
11 in the constitutional analysis. *See Tavurov v Noem*, --- F.Supp.3d ---, (2026 WL 323054) (W.D.  
12 Wash. Feb. 6, 2026).

13 30. Courts have granted bond hearings for arriving aliens detained for periods ranging  
14 from ten months to over three years. *Kydyrali v Wolf*, 499 F.Supp 3d 768 (S.D. Cal. 2020).

16 31. In *Kydyrali v. Wolf*, the court surveyed numerous cases where arriving aliens were  
17 granted bond hearings, noting detention periods of 16-19 months in multiple jurisdictions. *Id*. The  
18 court concluded that "agree[ing] that prolonged mandatory detention pending removal proceedings,  
19 without a bond hearing, will—at some point—violate the right to due process." *Id* at 771 (internal  
20 citations omitted).

22 32. Accordingly, the 9th Circuit has established that arriving aliens subject to mandatory  
23 detention under 8 U.S.C. § 1225(b) have constitutional due process rights that require individualized  
24 bond hearings when detention becomes unreasonably prolonged.

25 33. District Courts in the 9<sup>th</sup> Circuit have established that when granting relief in the form  
26 of bond, "the government bears the burden of establishing by clear and convincing evidence that  
27 Petitioner is a danger to the community or such a flight risk that no amount of bond or  
28 monitoring system can ensure his appearance for future proceedings, in order to continue his

1 detention.” *Kydyrali v. Wolf* at 774-5; *see also Tavurov v. Noem*, --- F.Supp.3d ----, (2026 WL  
2 323054) (W.D. Wash. Feb. 6, 2026).

3 34. Alternatively, Courts have given the government the option of releasing Petitioners  
4 under “appropriate conditions of release.” *Tavurov v. Noem*, --- F.Supp.3d ----, (2026 WL 323054)  
5 (W.D. Wash. Feb. 6, 2026).  
6

7 **ARGUMENT**

8 35. Mr. Bah’s continued detention violates the Due Process Clause of the 5<sup>th</sup> Amendment  
9 as interpreted by the 9<sup>th</sup> Circuit because his detention has been “unreasonably prolonged” as  
10 established by the Court in *Banda v. McAleenan*, 385 F.Supp.3d 1099 (9<sup>th</sup> Cir. 2019).  
11

12 36. The test established in *Banda* evaluates six-factors that the court considers when  
13 evaluating the reasonableness of the length of detention: (1) length of detention, (2) anticipated  
14 duration of future detention, (3) conditions of detention, (4) delays in removal proceedings caused by  
15 the detainee, (5) delays caused by the government, and (6) likelihood that proceedings will culminate  
16 in a final removal order. *Id.*

17 37. Accordingly, this Court should order Mr. Bah’s immediate release under conditions of  
18 supervision, or a bond hearing where the government bears the burden of establishing by clear and  
19 convincing evidence that Petitioner is a danger to the community or such a flight risk that no amount  
20 of bond or monitoring system can ensure his appearance for future proceedings, in order to continue  
21 his detention.  
22

23 **I. Mr. Bah’s continued detention violates the six-factor test established in *Banda*.**

24 **a. *The total length of time Mr. Bah has spent in detention violates Due Process.***

25 38. Under the *Banda* analysis, the length of detention is “the most important factor.” *Id.* at  
26 1118.  
27  
28

1 39. Courts have granted bond hearings for arriving aliens detained for periods ranging  
2 from ten months to over three years. *See Kydyrali v. Wolf*, 499 F.Supp 3d 768 (S.D. Cal. 2020).

3 40. Mr. Bah was initially detained on December 13, 2024, and has now been detained for  
4 nearly twenty-seven (27) months.

5 41. Clearly based upon the foregoing precedent, Mr. Bah has been detained for an  
6 unreasonably prolonged length of time, and this factor weighs in his favor.  
7

8 **b. *Mr. Bah has no reasonable expectation of when his detention will end.***

9 42. The second factor requires consideration of “how long the detention is likely to  
10 continue absent judicial intervention; in other words, the anticipated duration of all removal  
11 proceedings—including administrative and judicial appeals.” *Banda*, 385 F. Supp. 3d at 1119.

12 43. Petitioner’s case is currently pending on appeal with the BIA. Decisions with the BIA,  
13 based upon undersigned counsel’s experience, can vary widely and have no defined timeline – even  
14 in detained cases. Even assuming that the denial of Petitioner’s claim for relief is upheld by the BIA,  
15 he retains appeal rights to the Ninth Circuit  
16

17 44. According to the Ninth Circuit’s public website, it takes approximately 6 to 12 months  
18 from the date of the notice of appeal to oral argument and, following argument, most cases take three  
19 months to a year for the Court of Appeals to decide the case. *See* U.S. Court of Appeals for the Ninth  
20 Circuit, Frequently Asked Questions, [www.ca9.uscourts.gov/content/faq.php](http://www.ca9.uscourts.gov/content/faq.php) (last accessed March 6,  
21 2026).  
22

23 45. Accordingly, the length that the proceedings could potentially continue favor  
24 Petitioner.

25 **c. *Conditions of Detention favor Mr. Bah.***

26 46. “The more that the conditions under which the noncitizen is being held resemble penal  
27 confinement, the stronger the argument that he is entitled to a bond hearing. A claim for punitive  
28

1 detention requires a comparison of the conditions under which civil and criminal detainees are  
2 held.” *Tavurov v. Noem*, --- F.Supp.3d ----, (2026 WL 323054 at \*5) (W.D. Wash. Feb. 6, 2026).

3 47. Petitioner is detained at Imperial Regional Adult Detention Facility. The conditions  
4 there have been documented in public reports, specifically noting two (2) deaths which have occurred  
5 in the facility since September of 2025.<sup>2</sup>  
6

7 48. The article states, “the detention center has repeatedly failed to provide adequate  
8 medical care in recent years, according to state and federal inspectors. In 2020, federal inspectors  
9 found the medical team was short-staffed and staff were checking the health of detainees at night  
10 while they were sleeping, without actually speaking to them.”<sup>3</sup>

11 49. As the conditions of the Imperial Detention Center must be construed as penal, the  
12 instant factor favors Petitioner.

13 *d. Mr. Bah has not contributed to any delay in the proceedings, all delays have been*  
14 *caused by Respondents.*  
15

16 50. Petitioner will analyze the fourth and fifth factors together for brevity, as they relate  
17 to the cause of delays in the matter.

18 51. “The fourth and fifth factors consider the nature and extent of any delays in the  
19 removal proceedings caused by petitioner and the Government, respectively. Petitioner is entitled to  
20 raise legitimate defenses to removal ... and such challenges to his removal cannot undermine his claim  
21 that detention has become unreasonable.” *Tavurov v. Noem*, --- F.Supp.3d ----, (2026 WL 323054 at  
22 \*6) (W.D. Wash. Feb. 6, 2026) (internal citations omitted)  
23

24  
25  
26 <sup>2</sup> *KPBS* “Advocates remember two immigrants who died in ICE custody in Imperial County”  
27 (Feb.25, 2026) < <https://www.kpbs.org/news/border-immigration/2026/02/25/advocates-remember-two-immigrants-who-died-in-u-s-immigration-and-customs-enforcement-custody-in-imperial-county>>  
28

<sup>3</sup> *Id.*

1 52. With respect to the Government, “[i]f immigration officials have caused delay, it  
2 weighs in favor of finding continued detention unreasonable .... Continued detention will also appear  
3 more unreasonable when the delay in the proceedings was caused by the immigration court or other  
4 non-ICE government officials.” *Id* (internal citations omitted).

5  
6 53. Even if “not the result of intentional action on behalf of government officials, these  
7 delays are attributable to the Government.” *Id* (internal citations omitted).

8 54. Petitioner has not delayed his proceedings. Accordingly, any delays in this matter must  
9 be attributed to the Respondents, and these two factors favor Petitioner.

10 ***e. The likelihood of a removal order is speculative.***

11 55. The final factor involves consideration of “the likelihood that the final proceedings  
12 will culminate in a final order of removal.” *Banda v McAleenan*, 385 F.Supp.3d 1099, 1120 (9<sup>th</sup> Cir.  
13 2019) (internal citations omitted).

14  
15 56. Petitioner’s Form I-589, Application for Asylum and Withholding of Removal is  
16 currently pending on appeal at the BIA.

17 57. Petitioner has presented evidence of persecution that he reasonably believes is  
18 sufficient to warrant a grant of asylum.

19 58. Petitioner avers that the Court should consider this factor to be neutral.

20  
21 59. Based upon the foregoing, this Court should order Mr. Bah’s immediate release under  
22 conditions of supervision, or a bond hearing where the government bears the burden of establishing  
23 by clear and convincing evidence that Petitioner is a danger to the community or such a flight risk  
24 that no amount of bond or monitoring system can ensure his appearance for future proceedings, in  
25 order to continue his detention.

26 **CLAIMS FOR RELIEF**

27 **COUNT ONE**  
28 **Violation of 8 U.S.C. § 1225(b)**

1 60. Mr. Bah realleges and incorporates by reference the paragraphs above.

2  
3 61. 8 U.S.C. § 1225(b), as interpreted by the 9<sup>th</sup> Circuit in *Banda*, "unreasonably prolonged  
4 detention of an unadmitted alien arriving in the United States without a bond hearing violates due  
5 process" and is constitutionally impermissible. 385 F.Supp.3d 1099 (9<sup>th</sup> Cir. 2019).

6 62. Mr. Bah has been detained for nearly twenty-seven months and his removal is not  
7 reasonably foreseeable. Therefore, his continued detention violates 8 U.S.C. § 1225(b) and requires  
8 his immediate release.

9  
10 **COUNT TWO**  
11 **Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution**  
12 **Detention Without Bond**

12 63. Mr. Bah realleges and incorporates by reference the paragraphs above.

13 64. The Due Process Clause of the Fifth Amendment forbids the government from  
14 depriving any person of liberty without due process of law. U.S. Const. Amend. V.

15 65. Mr. Bah's detention without a bond hearing violates due process, which demands that  
16 Mr. Bah receive a bond hearing before a neutral adjudicator at which the Government bears the burden  
17 of justifying continued detention by clear and convincing evidence and at which the adjudicator  
18 considers appropriate alternatives to detention and Mr. Bah's ability to pay.

19  
20 **PRAYER FOR RELIEF**

21  
22 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 23 a. Assume jurisdiction over this matter;
- 24 b. Issue an Order to Show Cause ordering Respondents to show cause why this Petition  
25 should not be granted within three days;
- 26 c. Issue a Writ of Habeas Corpus requiring that Respondents **immediately release**  
27 **Petitioner;**
- 28

- 1 a. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act
- 2 (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other basis justified under law;
- 3 and
- 4 b. Grant any other and further relief that this Court deems just and proper.
- 5
- 6

7 Respectfully Submitted,

8  
9 Date: March 06, 2026

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List of Respondents

1. **Patrick Divver**, Field Office Director of Enforcement and Removal Operations, San Diego Field Office, Immigration and Customs Enforcement;
2. **Jeremy Casey**, Facility Administrator, Imperial Regional Detention Facility,