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9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 **ISSAKA NII DOODO ABUBAKAR**
13 **SADDICK,**

14 **Petitioner,**

15 **v.**

16 **MARKWAYNE MULLIN, Secretary of**
17 **the Department of Homeland Security,**
18 **TODD BLANCHE, Acting Attorney**
19 **General, TODD M. LYONS, Acting**
20 **Director, Immigration and Customs**
21 **Enforcement, JESUS ROCHA, Acting**
22 **Field Office Director, San Diego Field**
23 **Office, Warden Casey, Warden at Otay**
24 **Mesa Detention Center,**

25 **Respondents.**

Case No: 3:26-CV-1984-BAS-VET

Amended Petition
for a
Writ of Habeas Corpus

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27
28

1 INTRODUCTION

2 Issaka Nii Doodo Abubakar Saddick has been detained pending his
3 immigration proceedings and his Board of Immigration Appeals (“BIA”) appeal for
4 16 months and counting. This Court should continue to “join[] the majority of
5 courts across the country in concluding that his unreasonably prolonged detention
6 under 8 U.S.C. § 1225(b) without an individualized bond hearing violates due
7 process.” *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia,
8 J.); *see also Alemanji v. Noem*, 25-cv-3499-JO-DDL, Dkt. 12 (S.D. Cal. Dec. 12,
9 2025) (granting prolonged detention habeas for individual detained 11 months).

10 STATEMENT OF FACTS

11 Mr. Abubakar is from Ghana. Ex. A ¶ 1. On or around December 21, 2024,
12 he entered the United States and was detained. *Id.* ¶ 2. On July 31, 2025, an
13 immigration judge (“IJ”) granted him withholding of removal but denied his claim
14 for asylum. *Id.* Mr. Abubakar appealed to the BIA. *Id.*

15 On March 6, 2026, the BIA sent the case back to the IJ because of a defect
16 in the July hearing. *Id.* ¶ 4. Mr. Abubakar’s case remains ongoing. *See* Ex. B.

17 LEGAL BACKGROUND

18 **I. The Fifth Amendment’s Due Process Clause prohibits prolonged**
19 **immigration detention without a bond hearing.**

20 This habeas petition presents a question about whether and when the Fifth
21 Amendment’s Due Process Clause countermands the government’s statutory
22 authority to detain immigrants without bond hearings. Mr. Abubakar is detained
23 under one such statute, 8 U.S.C. § 1225(b). “Section 1225 applies to ‘applicants for
24 admission’—noncitizens who ‘arrive[] in the United States,’ or are ‘present’ in the
25 United States but have ‘not been admitted.’” *Banda v. McAleenan*, 385 F. Supp. 3d
26 1099, 1111 (W.D. Wash. 2019). It “applies to, among others, noncitizens initially
27 determined to be inadmissible because of . . . lack of valid documentation.” *Id.* That
28 includes persons who, like Mr. Abubakar, are apprehended near the border and—

1 rather than producing admission documents—make asylum and other fear-based
2 claims. *See id.* at 1109–11 (describing a similar procedural history and finding that
3 petitioner was detained under § 1225(b)). Such immigrants are detained under
4 § 1225(b) not only during their initial proceedings, but also when they appeal to the
5 BIA. *See id.* at 1111 (reaching same conclusion for immigrant with pending BIA
6 appeal).

7 In years past, the Ninth Circuit applied the constitutional avoidance canon to
8 hold that § 1225(b) implicitly entitled detained immigrants to bond hearings every
9 six months. *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015). But the
10 Supreme Court overruled that precedent in *Jennings v. Rodriguez*, holding that the
11 statute does not entitle detainees to bond hearings or otherwise impose “any limit
12 on the length of detention.” 583 U.S. 281, 297 (2018). But *Jennings* did not address
13 whether prolonged, mandatory detention without bond hearings violates due
14 process. *Id.* at 312.¹

15 “In the wake of *Jennings*, district courts have grappled with how to address
16 due process challenges to prolonged mandatory detention under § 1225(b).” *Banda*,
17 385 F. Supp. 3d at 1116. Yet “[n]early all district courts that have considered the
18 issue agree that prolonged mandatory detention pending removal proceedings,
19 without a bond hearing, will—at some point—violate the right to due process.” *Id.*
20 (cleaned up) (collecting cases).

21 These courts have taken their cues largely from *Zadvydas v. Davis*, 533 U.S.
22 678 (2001). There, the Court construed a statute to provide that persons detained
23 following a final removal order may not be subjected to indefinite detention. *Id.* at
24 699. The Court justified its holding by describing the serious due process concerns
25 that indefinite detention would occasion:

26
27 ¹ The Court’s later decision in *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020),
28 also poses no barrier to relief for a detention-based due process claim. *See Lopez-Arevalo v.*
Ripa, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7–9 (W.D. Tex. Sept. 22, 2025).

1 A statute permitting indefinite detention of an alien would raise a
2 serious constitutional problem. The Fifth Amendment's Due Process
3 Clause forbids the Government to 'depriv[e] any 'person ... of ...
4 liberty ... without due process of law.' Freedom from imprisonment—
5 from government custody, detention, or other forms of physical
6 restraint—lies at the heart of the liberty that Clause protects. *See*
7 *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And this Court has said
8 that government detention violates that Clause unless the detention is
9 ordered in a *criminal* proceeding with adequate procedural
10 protections, *see United States v. Salerno*, 481 U.S. 739, 746 (1987),
11 or, in certain special and 'narrow' nonpunitive 'circumstances,'
12 *Foucha, supra*, at 80, where a special justification, such as harm-
13 threatening mental illness, outweighs the 'individual's constitutionally
14 protected interest in avoiding physical restraint.' *Kansas v. Hendricks*,
15 521 U.S. 346, 356 (1997).

16 *Id.*

17 As the Ninth Circuit put it in *Jennings'* wake, these considerations raise
18 "grave doubts that any statute that allows for arbitrary prolonged detention without
19 any process is constitutional or that those who founded our democracy precisely to
20 protect against the government's arbitrary deprivation of liberty would have
21 thought so." *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018). The same
22 concerns have led district courts to conclude that immigrants cannot be detained
23 indefinitely without bond hearings pending their immigration proceedings.

24 **II. Courts have reached different conclusions about when immigration
25 detention becomes indefinitely prolonged, but Mr. Abubakar would
26 prevail under any standard.**

27 Though courts agree that due process mandates a bond hearing when
28 detention grows unreasonably prolonged, they disagree about how to assess
whether a particular migrant's detention has reached that point. *Sanchez-Rivera v.*
Matuszewski, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5–6 (S.D. Cal.
Jan. 9, 2023) (Anello, J.) (surveying the various approaches). Some courts have
"conclude[d] . . . that detention becomes prolonged after six months and entitles [a

1 petitioner] to a bond hearing.” *Rodriguez v. Nielsen*, No. 18-CV-04187-TSH, 2019
2 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019).

3 In that case, Mr. Abubakar would automatically qualify, as he has been
4 detained for more than 16 months.

5 Other courts have adopted multifactor tests. *See Sanchez-Rivera*, 2023 WL
6 139801, at *5–6 (surveying different approaches). Courts generally agree that
7 relevant factors include:

- 8 (1) “the total length of detention to date,”
- 9 (2) “the likely duration of future detention,” and
- 10 (3) “the delays in the removal proceedings caused by the petitioner and the
11 government.”

12 *Id.* Some courts also consider:

- 13 (4) “the conditions of detention,” and
- 14 (5) “the likelihood that the removal proceedings will result in a different final
15 order.”

16 *Id.*; *but see Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) (holding
17 that the fourth and fifth factors are “not particularly suited to assisting the Court in
18 determining whether detention has become unreasonable and due process requires
19 a bond hearing”); *Sanchez-Rivera*, 2023 WL 139801, at *5–6 (agreeing with
20 *Lopez*).

21 Mr. Abubakar would prevail under any of those tests.

22 First, the “most important factor,” the length of detention, favors
23 Mr. Abubakar. *Banda*, 385 F. Supp. 3d at 1118. “It is important to bear in mind the
24 context: The detention that is being examined here is the detention of a human being
25 who has never been found to pose a danger to the community or to be likely to flee
26 if released.” *Jamal A v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. 2019). With
27 that context, courts have granted bond hearings for persons detained between nine
28 and eleven months, less than Mr. Abubakar’s sixteen months in detention. *See*

1 *Ashemuke v. ICE Field Off. Dir*, No. C23-1592-RSL-MLP, 2024 WL 1683797, at
2 *4 (W.D. Wash. Feb. 29, 2024), *report and recommendation adopted*, No. C23-
3 1592-RSL, 2024 WL 1676681 (W.D. Wash. Apr. 18, 2024) (“approximately eleven
4 months”); *Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (“over nine
5 months”); *Perez v Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *5
6 (S.D.N.Y. Aug. 20, 2018) (“more than nine months”); *Masood v. Barr*, No. 19-CV-
7 07623-JD, 2020 WL 95633, at *2 (N.D. Cal. Jan. 8, 2020) (“nearly nine months”).

8 Second, Mr. Abubakar has reason to anticipate significant future detention
9 during his appellate process. A BIA appeal itself can take months, and afterward, a
10 petitioner may appeal to the Ninth Circuit. *See Banda*, 385 F. Supp. 3d at 1119. All
11 told, “[t]his process may take up to two years or longer.” *Id.* Because “Petitioner’s
12 future detention can last several more months or even years[,]” this factor also
13 favors Mr. Abubakar. *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL
14 2932654, at *5 (S.D. Cal. Oct. 15, 2025) (Lopez. J.).

15 Third, Mr. Abubakar did not needlessly delay his asylum proceedings. His
16 appeal, as the procedural history shows, was meritorious and resolved in less than
17 the normal time for BIA appeals.

18 Fourth, Mr. Abubakar’s conditions of confinement also favor a bond hearing.
19 Imperial Detention Center is a penal environment far removed from the outside
20 world. Yet Mr. Abubakar has not even been charged with a crime.

21 Thus, under any test, then, Mr. Abubakar is entitled to a bond hearing.

22 CLAIM AND PRAYER FOR RELIEF

23 Here, because ordering a bond hearing before a randomly selected IJ would
24 not properly redress the constitutional violations present in this matter, Petitioner
25 urges the court to provide an alternative corrective measure. That might include
26 outright release. *See, e g*, Order, ECF No. 14 at 19, *Miri v. Bondi*, No. 5:26-CV-
27 00698-MEMF (C.D. Cal. March 5, 2026); *Moctezuma v. Henkey*, No. 1:25-CV-
28 00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026). Or it could mean

1 holding a bond hearing in district court. *See, e.g., L.G.M. v. LaRocco*, 788
2 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025).

3 A third option would be to craft an order like Judge Simmons's procedure in
4 the *Sandesh* case. *See* Order, ECF No. 13, *Sandesh v. LaRose*, No. 3:26-CV-00846-
5 JES (S.D. Cal. March 5, 2026). Specifically, the Court should order:

6
7 (1) Respondents provide Petitioner with a hearing and individualized bond
8 determination within ten days of its order. *Id.*

9 (a) At that hearing, the government shall bear the burden of
10 establishing by clear and convincing evidence that Petitioner poses a
11 danger or flight risk, while further specifying that concerns about
12 interrupting court schedules is not a ground to deny bond. *Id.*

13 (b) The IJ shall consider alternative conditions of release and
14 Petitioner's ability to pay bond if he or she determines bond is
15 appropriate. *Id.*

16 (c) Respondents shall make a complete record of the bond hearing
17 available to Petitioner and his counsel. *Id.*

18 (2) Respondents are ordered to file a Notice of Compliance within five days
19 of providing Petitioner with the bond hearing, including apprising the
20 Court of the results of the hearing. *Id.*

21 (3) Prohibit ICE from invoking the automatic stay provisions under 8 C.F.R.
22 § 1003.19(i)(2) to defeat the IJ's bond determination.

23 Finally, this Court should order all other relief that the Court deems just and
24 proper.

25 Respectfully submitted,

26 Dated: April 24, 2026

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