

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
SCRANTON DIVISION**

SHOLA ADEDIJI,

Petitioner,

v.

**CRAIG LOWE, in his official
capacity as Warden of Pike County
Correctional Center,**

Respondent.

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**PETITION FOR A WRIT OF
HABEAS CORPUS**

No. 3:25-CV-1464-SAC

**PETITIONER’S REPLY IN SUPPORT
OF HIS PETITION FOR A WRIT OF HABEAS CORPUS**

Respondent concedes the relevant procedural facts and events alleged in Mr. Adediji’s petition. Respondent concedes that Mr. Adediji entered ICE custody on July 12, 2024, ECF No. 4, at 4, that Mr. Adediji was detained at Clinton County Correctional Facility for approximately nine months and was then transferred to Pike County Correctional Facility on April 29, 2025, where he remains in detention today. *Id.* at 4, 5. Respondent concedes that U.S. Immigration Judge Armstrong granted Mr. Adediji’s application for deferral of removal under the Convention Against Torture (CAT), finding that Mr. Adediji had “submitted credible evidence that he would likely be tortured

Id. at 5.

Respondent agrees that the Department of Homeland Security (“DHS”) appealed Judge Armstrong’s decision to the Board of Immigration Appeals (BIA) and that, on February 13, 2025, the BIA remanded the case for further findings. Mr. Adediji has been detained for more than 14 months and, absent this Court’s intervention, his detention will continue.¹

I. Mr. Adediji Makes an As-Applied Challenge to the Reasonableness of His Continuing Detention Under *German Santos*, Not a Facial Challenge to the Constitutionality of 8 U.S.C. § 1226(c).

Mr. Adediji’s habeas corpus petition under 28 U.S.C. § 2241 is an as-applied challenge to the reasonableness of his continuing detention under 8 U.S.C. § 1226(c). Respondent devotes half of its argument to defending against a facial challenge to the constitutionality of § 1226(c) that Mr. Adediji has not made. ECF No. 4, at 9-15. These arguments are irrelevant. Respondent concedes that Mr. Adediji may challenge the constitutionality of his prolonged § 1226(c) detention under *German Santos v. Warden Pike County Correctional Facility*, 965 F.3d 203, 211 (3d Cir. 2020). ECF No. 4, at 8.

¹ Respondent argues that Mr. Adediji’s petition should be denied because it contends he is a flight risk. ECF No. 4 at 18. Mr. Adediji denies Respondent’s allegation, which Respondent may raise at a bond hearing but is irrelevant under *German Santos v. Warden Pike County Correctional Facility*, 965 F.3d 203, 211 (3d Cir. 2020).

II. Under *German Santos*, Mr. Adediji's Detention Is Unreasonably Prolonged.

Respondent concedes that the four-factor test articulated in *German Santos* governs Mr. Adediji's as-applied challenge to his detention. The factors are: (1) the "duration of detention"; (2) "whether the [noncitizen]'s detention is likely to continue"; (3) the reasons for any delay, particularly "whether either party made careless or bad-faith errors in the proceedings that cause[d] unnecessary delay"; and (4) "whether the [noncitizen]'s conditions of confinement are meaningfully different from criminal punishment." *German Santos*, 965 F.3d at 211. All four *German Santos* factors favor Mr. Adediji. Mr. Adediji has been detained for fourteen months; his detention will continue; DHS caused unnecessary delay by appealing to the Board of Immigration Appeals, leading to the reassignment of and repeated delays in his remanded immigration proceeding; and, as Respondent concedes, the conditions of Mr. Adediji's confinement are indistinguishable from criminal detention.

a. Respondent Concedes That the Conditions of Mr. Adediji's Confinement Weigh in Favor of a Bond Hearing.

On the fourth factor, Respondent agrees that Mr. Adediji's detention in punitive conditions no different than criminal confinement favors granting his habeas petition. ECF No. 4, at 24 ("In *German Santos*, the Third Circuit found that the conditions at Pike County Correctional Facility were punitive as to immigration

detainees.... The Respondent does not challenge that rationale and submits that this factor should weigh in favor of granting the Petitioner a bond hearing.”). Mr. Adediji has been detained at Pike for the last five months of his 14-month detention.² This factor weighs in favor of granting Mr. Adediji’s petition.

b. Mr. Adediji’s Now More Than Fourteen Months in Detention Is Unreasonable Under Well-Established Caselaw.

Mr. Adediji’s detention without a bond hearing for more than fourteen months is unreasonable. Respondent does not attempt to distinguish the cases cited in Mr. Adediji’s petition finding comparable periods of detention unreasonable.

German Santos did not set a “bright-line threshold” for when detention becomes unreasonable. The Court of Appeals identified benchmarks to assess reasonableness. 965 F.3d at 211. The Court noted that Mr. German Santos’s detention (i) “[wa]s five times longer than the six months [in] *Demore*”; (ii) “more than double the six-month-to-one-year period that triggered a bond hearing in *Chavez-Alvarez*”; and that (iii) the length of Mr. German Santos’s 35-month

² Respondent implies that the nine months Mr. Adediji was detained at the Clinton County Correctional Facility has a bearing on whether his current conditions of confinement at Pike are punitive. ECF No. 4, at 24. *German Santos* did not hold that the current conditions of confinement under the fourth factor must be co-extensive with the total period of detention under the first factor. In any event, the conditions of confinement at Clinton “can reasonably be found to be punitive and support a finding of unreasonableness with respect to th[e] final [*German Santos*] factor.” *Buleishvili v. Hoover*, No. 1:20-CV-1694, 2021 WL 674226, at *4 (M.D. Pa. Feb. 22, 2021). Mr. Adediji’s detention at Clinton, as at Pike, was indistinguishable from criminal confinement. ECF No. 1, at 5-6 (¶¶ 17-18).

detention “weigh[ed] strongly” in his favor. *Id.* at 212 (citing *Demore v. Kim*, 538 U.S. 510, 530–31 (2003), and *Chavez-Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 477 (3d Cir. 2015)).

Numerous courts applying *German Santos* have found detentions of similar duration to Mr. Adediji’s unreasonably prolonged. *See, e.g., Rivas v. Oddo*, No. 3:22-CV-223, 2023 WL 4361140, at *2 (W.D. Pa. June 27, 2023) (fifteen months of detention unreasonable); *Grigoryan v. Jamison*, No. CV 25-1389, 2025 WL 1257693, at *3 (E.D. Pa. Apr. 30, 2025) (seventeen months of detention unreasonable); *Malede v. Lowe*, No. 1:22-CV-01031, 2022 WL 3084304, at *6 (M.D. Pa. Aug. 3, 2022) (eighteen months of detention unreasonable). In *Rivas*, the court noted that § 1226(c) detention becomes increasingly unreasonable the longer a habeas petitioner waits for a bond hearing. 2023 WL 4361140, at *2 (granting petition and ordering bond hearing “because the duration of Petitioner’s detention without hearing is *currently* unreasonable. It is now nearly four months since Magistrate Judge Pesto entered his R&R ..., which means that Petitioner has been detained for over fifteen months without a hearing.” (emphasis in original)).

Respondent does not address these cases, relying instead on cases requiring longer detention, including cases decided years before *German Santos*. ECF No. 4, at 16-17. Many of these cases are distinguishable from the circumstances of Mr. Adediji’s detention. Respondent cites *Flores-Lopez v. Lowe*, No. 1:21-CV-

1839, 2021 WL 6134453, at *2 (M.D. Pa. Dec. 29, 2021), to argue that nineteen months of detention does not warrant a bond hearing. As the *Flores-Lopez* court explained, however, “*Flores-Lopez*’s detention ... is governed by 8 U.S.C. § 1226(a) rather than § 1226(c), and given the differences between the two statutory provisions, the balancing required by *Chavez-Alvarez*, *Diop*, and their progeny is inappropriate in the context of § 1226(a).” *Id.* (internal citations omitted). The court declined to apply *German Santos* because “[u]nlike petitioners detained under § 1226(c), who are often detained without receiving a bond hearing, petitioners detained under § 1226(a) are afforded a prompt bond hearing and are given the opportunity to seek redetermination of the denial of bond after the initial hearing.” *Id.* Mr. Adediji is detained under § 1226(c) and has never had a bond hearing.

In *Gabriel v. Barr*, another case Respondent relies on, the court found that eighteen months in detention was not unreasonable because the petitioner had received a bond hearing from an immigration judge within the last “ten to eleven months.” No. 1:20-CV-1054, 2021 WL 268996, at *3 (M.D. Pa. Jan. 27, 2021). Mr. Adediji has had no bond hearing.

Respondent argues that the Court should “consider the reasons for the length of detention, rather than simply totaling the months that Mr. Adediji has been detained. ECF No. 4, at 20. Respondent implies that the time attributable to Mr. Adediji’s originally successful application for CAT relief should not count

toward an evaluation of the reasonable of the length of his detention—as if the time required for Judge Armstrong’s determination that Mr. Adediji had “submitted credible evidence that he would likely be tortured” after removal, *id.* at 5, could be separated from the time required for DHS’s effort to remove him anyway. *German Santos* squarely rejects this argument. 965 F.3d at 211 (“[W]e do not hold an alien’s good-faith challenge to his removal against him, even if his appeals or applications for relief have drawn out the proceedings.”).³ Mr. Adediji’s pursuit of CAT relief does not make his prolonged detention reasonable under *German Santos*. DHS appealed Judge Armstrong’s grant of CAT relief, as was its right, just as Mr. Adediji has the right to appeal any subsequent withdrawal of CAT relief. Either way, Mr. Adediji will remain in detention without a bond hearing absent this Court’s intervention.

Numerous courts have found detentions comparable to Mr. Adediji’s to be unreasonably prolonged. *See* ECF No. 1, at 8-9 (¶ 29) (collecting cases). This factor weighs in favor of Mr. Adediji.

³ The case Respondent relies on here is out-of-circuit and out-of-date. *See* ECF No. 4, at 20 (citing *Doherty v. Thornburgh*, 943 F.2d 204, 211 (2d Cir. 1991)). More recent Second Circuit precedent undermines Respondent’s argument. *See Hechavarria v. Sessions*, 891 F.3d 49, 56 n.6 (2d Cir. 2018), *as amended* (May 22, 2018) (distinguishing “immigrant who has substantially prolonged his stay by abusing the processes provided to him” from “immigrant who simply made use of the statutorily permitted appeals process”).

c. Mr. Adediji's Detention Will Likely Continue.

Respondent describes the second *German Santos* factor as relying on “unhelpful hypothesizing of future events” and “improperly requir[ing] litigants to argue to this Court the merits of their position at the administrative level.” ECF No. 4, at 22. Respondents’ position on the helpfulness or propriety of *German Santos* is irrelevant given that it is binding circuit precedent. Mr. Adediji’s detention will likely continue regardless of the result of his next immigration hearing.

The Middle District of Pennsylvania has found that this factor weighs in favor of a bond hearing in situations analogous to Mr. Adediji’s. *See McDougall v. Warden, Pike Cnty. Corr. Facility*, No. 3:23-CV-759, 2023 WL 6161038, at *2 (M.D. Pa. Sept. 21, 2023) (“[T]he Court finds that McDougall’s detention will likely continue into the foreseeable future. His appeal is still pending before the BIA, and even if he were to receive an unfavorable decision from the BIA, he could then seek relief from the Third Circuit.... This factor supports a finding of unreasonableness.”); *see also Elyardo v. Lechleitner*, No. 1:23-CV-01089, 2023 WL 8259252 at *3 (M.D. Pa. Nov. 29, 2023) (“The likelihood of continued detention also weighs in favor of habeas corpus relief. Elyardo’s underlying immigration case has been remanded by the BIA for further proceedings by an immigration judge and is scheduled for a hearing before an immigration judge....”); *Akhmadjanov v. Oddo*, No. 3:25-CV-00035, 2025 WL 660663 at *7–8 (W.D. Pa. Feb. 28, 2025) (finding

this factor weighed in favor of petitioner when the “issue of asylum is currently on remand from the BIA, and the process could extend for several months, as either party may appeal the IJ’s subsequent ruling once again to the BIA and, ultimately, the Court of Appeals”).

Here, in late July 2025, a new Immigration Judge was assigned to Mr. Adediji’s case. ECF No. 1-3, Declaration of Shola Adediji ¶¶ 15-16. The new Immigration Judge scheduled a hearing for August 11, 2025, but before the hearing issued an order stating that she planned to deny his CAT application—notwithstanding the findings of the prior Immigration Judge—and encouraged him to waive a formal decision. *Id.* Mr. Adediji declined. The Immigration Judge has rescheduled the hearing four times. The hearing is currently scheduled for September 25, 2025. *See* Exhibit A.⁴

⁴ There is “massive backlog in immigration courts. And the Justice Department has fired or not renewed the contracts of dozens of judges who decide whether individuals should be allowed to remain in the U.S.” Amna Nawaz, *As Immigration Courts Face Backlog, DOJ Cuts Dozens of Judges*, PBS NEWS HOUR, (July 22, 2025), available at <https://www.pbs.org/newshour/show/as-immigration-courts-face-backlog-doj-cuts-dozens-of-judges> (accessed on September 11, 2025); *see also* Ted Oberg, *et al.*, *Immigration Courts Clogged for Years as Trump Vows to Deport Millions More*, NEWS4 WASHINGTON (Mar. 4, 2025), available at <https://www.nbcwashington.com/investigations/immigration-courts-clogged-for-years-as-trump-vows-to-deport-millions-more/3858328/> (accessed on September 11, 2025). The Middle District recently found that when the limited availability of judges and backlog of immigration cases are likely to delay proceedings, these factors weigh in favor of finding that detention is likely to continue. *Ologbenla v. Lowe*, No. 3:25-CV-1351, 2025 WL 2375272, at *3 (M.D. Pa. Aug. 14, 2025).

Mr. Adediji will appeal to the BIA if the Immigration Judge denies his CAT petition and, if necessary, will petition for review and seek a stay of removal from the Third Circuit Court of Appeals. If Mr. Adediji needs to seek judicial review in the Third Circuit, that process takes, on average, 9.7 months.⁵ Mr. Adediji's "detention will likely continue into the foreseeable future." *McDougall*, 2023 WL 6161038, at *2.

Mr. Adediji's potential need to appeal an adverse decision cannot, as Respondent suggests, be the basis to deny relief here under *German Santos*. ECF No. 4, at 22. The likelihood that Mr. Adediji's detention will continue pending an appeal to the BIA or Third Circuit "strongly supports a finding of unreasonableness." 965 F.3d at 212.

d. **The Government, Rather than Mr. Adediji, Has Unreasonably Delayed His Immigration Proceedings.**

Finally, the third *German Santos* factor favors Mr. Adediji. Detention "can ... grow unreasonable even if the Government handles removal proceedings reasonably." *German Santos*, 965 F.3d at 211; *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (limiting detention to ensure it remains "nonpunitive in purpose and effect.").

⁵ See U.S. Court of Appeals – Judicial Caseload Profile, pg. 2 (Dec. 31, 2024), available at https://www.uscourts.gov/sites/default/files/2025-02/fcms_na_appprofile1231.2024.pdf (median time from filing a notice of appeal to disposition as of December 31, 2024, was 9.7 months).

Here, DHS appealed Judge Armstrong's decision to the BIA. After the BIA remand on February 13, 2025, the case was delayed, then reassigned, and (after reassignment) delayed further when Mr. Adediji's hearing was rescheduled four times.

Mr. Adediji has diligently litigated his immigration case and sought the remedies available to him by law. He expeditiously pursued his CAT application before the Immigration Judge. ECF No. 1-3 at 3 (¶¶ 13-15). On remand from the BIA, Mr. Adediji promptly submitted additional evidence in support of his CAT application. *Id.* (¶ 17). There is no basis to conclude that Mr. Adediji has delayed his immigration proceeding.⁶

III. Conclusion

For the foregoing reasons, Mr. Adediji respectfully requests that this Court:

- a. Declare that his prolonged detention without a bond hearing violates the Due Process Clause of the Fifth Amendment;
- b. Conduct, or order Respondent to schedule before an Immigration Judge within 14 days, an individualized bond hearing with the burden of proof on Respondent to establish by clear and convincing evidence that Mr. Adediji poses a flight risk or a danger to the community and at

⁶ Because courts have almost unanimously found that the third factor favors neither side absent bad faith delays, this factor is, at worst, neutral. *See, e.g., Clarke v. Doll*, 481 F. Supp. 3d 394, 397–98 (M.D. Pa. 2020).

which the adjudicator considers alternatives to detention and ability to pay;

- c. Retain jurisdiction over this matter to conduct its own bond hearing or order other appropriate remedies should Respondent fail to comply with this Court's order; and
- d. Grant any other further relief this Court deems just and proper.

Respectfully submitted,

September 16, 2025

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petitioner's Reply in Support of His Petition for a Writ of Habeas Corpus was served on September 16, 2025, via the Court's CM ECF electronic filing system on the following counsel of record for Respondent:

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Dated: September 16, 2025

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