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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

AMOS NKONGOLO MUBANGA,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary
of the Department of Homeland
Security, TODD BLANCHE, Acting
Attorney General, TODD M.
LYONS, Acting Director,
Immigration and Customs
Enforcement, JESUS ROCHA,
Acting Field Office Director, San
Diego Field Office, JEREMY
CASEY, Warden at Imperial
Regional Detention Facility,

Respondents.

CIVIL CASE NO.: 26-cv-2565-JO-AHG

**Supplemental Briefing in Support of
Petition for a
Writ of Habeas Corpus**

1 INTRODUCTION

2 Amos Nkongolo Mubanga is an asylum seeker from the Democratic
3 Republic of Congo who has been detained pending his immigration proceedings
4 for over 16 months. On May 12, 2026, this Court conditionally appointed Federal
5 Defenders of San Diego, Inc., to represent Mr. Mubanga and ordered the parties to
6 brief: “(1) whether his prolonged detention without a bond hearing violates his
7 procedural due process rights; AND (2) whether such detention violates his
8 substantive due process rights, and if so, whether he is entitled to immediate
9 release.” ECF 8.

10 Mr. Mubanga’s 16-month detention without a bond hearing violates both his
11 procedural and substantive due process rights. The immigration judge refused to
12 provide Mr. Mubanga a Lingala interpreter, which made it impossible for him to
13 meaningfully communicate why he is not a danger or a flight risk. This procedural
14 due process violation also led to a substantive due process violation because it
15 deprived Mr. Mubanga of his liberty for a prolonged period of time without
16 individualized consideration of whether he is a danger or a flight risk. Moreover,
17 immediate release is the appropriate remedy because any additional time in custody
18 will only further these due process violations. Accordingly, this Court should grant
19 immediate release.

20 STATEMENT OF FACTS

21 Mr. Mubanga entered the United States on January 13, 2025, to escape
22 persecution in the Democratic Republic of the Congo and seek asylum. Declaration
23 of Amos Nkongolo Mubanga, Exhibit A, at ¶ 1. He was immediately detained and
24 has been in custody ever since. *Id.* at ¶ 2. He passed his credible fear interview and
25 was placed in removal proceedings. *Id.* Since then, he has been continuously
26 detained. *Id.* at ¶ 2.

27 An immigration judge ordered Mr. Mubanga removed on October 5, 2025.
28 *Id.* at ¶ 3. His case is currently on appeal with the BIA, and if dismissed, he plans

1 to appeal to the Ninth Circuit. *Id.* Mr. Mubanga has been detained for over sixteen
2 months and will likely be detained for several more years pending his appeal. *Id.* at
3 ¶ 4.

4 Since his original detention, Mr. Mubanga has had two bond hearings set. *Id.*
5 at ¶ 6. Yet Mr. Mubanga has never had the opportunity to have an immigration
6 judge make a substantive bond determination. *Id.* In his first hearing, he was
7 representing himself and the judge did not go forward. In his second hearing, a
8 French interpreter was provided, but Mr. Mubanga speaks very little French
9 because most people in the Democratic Republic of Congo learn French in school,
10 and he is not well educated. *Id.* As a result, he told the immigration judge he did
11 not feel comfortable proceeding in French. *Id.* He explained that he needed a
12 Lingala interpreter. *Id.* But the judge refused to provide one. *Id.* As a result, the
13 bond hearing could not go forward. *Id.*

14 All the while, Mr. Mubanga remains detained at Imperial Regional Detention
15 Center. He has health issues that he must continuously manage from the confines
16 of custody, including high blood pressure and heart palpitations. *Id.* at ¶ 7. He takes
17 medication for both and must rely on the staff at Imperial to provide that to him. *Id.*

18 LEGAL BACKGROUND

19 20 **I. Depriving Mr. Mubanga of a Lingala interpreter and detaining him for** 21 **16 months without an individualized determination violated procedural** 22 **due process.**

23 By refusing to provide Mr. Mubanga a Lingala interpreter, the IJ made it
24 impossible for him to meaningfully communicate why he is not a danger or a flight
25 risk. But even without this error, Mr. Mubanga's 16-months detention without an
26 individualized determination of whether he posed a danger or a flight risk violated
27 procedural due process.
28

1 **A. Denying Mr. Mubanga an interpreter violated his procedural due**
2 **process rights.**

3 Noncitizens are protected by the Fifth Amendment's Due Process Clause.
4 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Part of the process afforded by the
5 Constitution includes "a meaningful opportunity to be heard." *Augustin v. Sava*,
6 735 F.2d 32, 37 (2d Cir. 1984) (citation omitted). "It is long settled that a competent
7 translation is fundamental to a full and fair hearing." *Perez-LASTON v. Immigr. &*
8 *Naturalization Serv.*, 208 F.3d 773, 778 (9th Cir. 2000). "If an alien does not speak
9 English, deportation proceedings must be translated into a language the alien
10 understands." *Id.* Merely providing some sort of translation is not enough:
11 "incorrect or incomplete translation is the functional equivalent of no translation"
12 because immigrants and Immigration Judges ("IJ") must be able to understand each
13 other. *Id.* The burden is on the Respondent to provide translation into a language
14 the petitioner understands. *See* 8 C.F.R. § 208.30(d)(5); *Domingos v. Casey*, case
15 no. 3:26-cv-01151-BTM-JLB, 2026 WL 797425 (S.D. Cal. Mar. 23, 2026).

16 Here, the immigration court clearly violated Mr. Mubanga's right to a full
17 and fair hearing in a language he understands. Mr. Mubanga speaks Lingala, his
18 native language, fluently. Exh. A at ¶ 5. He does not speak English. *Id.* Because
19 French is taught in school in the Democratic Republic and Mr. Mubanga is not
20 welleducated, he understands very little French. *Id.* at ¶ 6.

21 Yet, the IJ failed to obtain a Lingala interpreter for Mr. Mubanga at either of
22 his bond hearings. *Id.* During the second bond hearing, the IJ attempted to conduct
23 Mr. Mubanga's bond hearing using a French interpreter. *Id.* There was some
24 confusion about what language he spoke, but Mr. Mubanga told the IJ he does not
25 understand French and speaks Lingala. *Id.* Even still, the IJ refused to provide a
26 Lingala interpreter. *Id.*

27 This is problematic for several reasons. First, Mr. Mubanga's French is far
28 too limited for him to meaningfully engage in legal proceedings using it. *See id.*

1 This is evidenced, in part, by the fact that the bond hearing did not happen using a
2 French interpreter. He further attempted to ask the IJ for an interpreter in the correct
3 language, but he was denied. *Id.*

4 Lingala is spoken by nearly 20 million people as a native language, primarily
5 by people in the Democratic Republic of the Congo. *Lingala*, WIKIPEDIA, available
6 at: <https://en.wikipedia.org/wiki/Lingala>. While French is the official language of
7 the Democratic Republic of the Congo, Lingala is influenced by French, and
8 modern Lingala borrows heavily from French—but this is mostly because
9 education in French has become more widespread. *See id.* Official languages in
10 many post-colonial African nations are often direct legacies of colonial rule and are
11 frequently not the mother tongue of most of the population. Barnett, Vicki, *Colonial*
12 *influence lingers in West Africa's official languages*, UCalgary News,
13 <https://ucalgary.ca/news/colonial-influence-lingers-west-africas-official-languages>
14 (May 23, 2014). This is true of French in the Democratic Republic of the Congo.
15 *Languages of the Democratic Republic of the Congo*, WIKIPEDIA, available at:
16 [https://en.wikipedia.org/wiki/Languages_of_the_Democratic_Republic_of_the_C](https://en.wikipedia.org/wiki/Languages_of_the_Democratic_Republic_of_the_Congo)
17 [ongo](https://en.wikipedia.org/wiki/Languages_of_the_Democratic_Republic_of_the_Congo). Lingala is a national language of the country, and the second-most spoken
18 language. *Id.*

19 This is important because it seems the IJ either did not believe Mr. Mubanga
20 required a Lingala interpreter or thought that a French interpreter would be
21 sufficient. But the above facts show the IJ should have believed Mr. Mubanga, and
22 in not believing him, deprived him of process and of a meaningful opportunity to
23 be heard. Mr. Mubanga has no reason to be dishonest about his language abilities.
24 He wants to seek asylum here in the United States and wants to be released while
25 he does so. It would be contrary to both of those goals to be dishonest about his
26 language; if he did actually understand French, it's possible he could have been
27 released from detention by now. Instead, the IJ's refusal to provide a Lingala
28 interpreter violated Mr. Mubanga's procedural due process rights by denying him

1 “a meaningful opportunity to be heard.” *Augustin*, 735 F.2d at 37.

2 **B. Even without the denial of a Lingala interpreter, Mr. Mubanga’s**
3 **16-month detention without a bond hearing violated procedural**
4 **due process.**

5 Mr. Mubanga’s 16-month detention without an individualized determination
6 of flight risk or danger independently violated procedural due process.
7 Mr. Mubanga is detained under 8 U.S.C. § 1225(b), which “applies to ‘applicants
8 for admission’—noncitizens who ‘arrive[] in the United States,’ or are ‘present’ in
9 the United States but have ‘not been admitted.’” *Banda v. McAleenan*, 385 F. Supp.
10 3d 1099, 1111 (W.D. Wash. 2019). It “applies to, among others, noncitizens
11 initially determined to be inadmissible because of . . . lack of valid documentation.”
12 *Id.* That includes persons who, like Mr. Mubanga, come to the United States to
13 make asylum and other fear-based claims. *See id.* at 1109–11 (describing a similar
14 procedural history and finding that petitioner was detained under § 1225(b)). Such
15 immigrants are detained under § 1225(b) not only during their initial proceedings,
16 but also when they appeal to the BIA. *See id.* at 1111 (reaching same conclusion
17 for immigrant with pending BIA appeal).

18 This statutory scheme has left courts to grapple with the limits (if any) of that
19 detention power: Does this statute permit the government to detain immigrants
20 indefinitely, without ever having to prove at a bond hearing that they pose a risk of
21 danger or flight? Three Supreme Court cases are potentially relevant to answering
22 that question.

23 First, in *Zadvydas v. Davis*, the Supreme Court indicated that indefinite
24 immigration detention raises serious due process concerns. 533 U.S. 678 (2001).
25 *Zadvydas* involved a statute authorizing the government to detain immigrants after
26 they are ordered removed. *Id.* at 683. For immigrants who cannot be removed, that
27 statute had the potential to subject them to years, decades, or a lifetime in custody.
28 *See id.* at 690. The Supreme Court held that if the statute “permit[ed] indefinite
detention of an alien[,] [it] would raise a serious constitutional problem,” because

1 [t]he Fifth Amendment's Due Process Clause forbids the Government
2 to 'depriv[e]' any 'person ... of ... liberty ... without due process of law.'
3 Freedom from imprisonment—from government custody, detention, or
4 other forms of physical restraint—lies at the heart of the liberty that
5 Clause protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And
6 this Court has said that government detention violates that Clause unless
7 the detention is ordered in a *criminal* proceeding with adequate
8 procedural protections, *see United States v. Salerno*, 481 U.S. 739, 746
9 (1987), or, in certain special and 'narrow' nonpunitive 'circumstances,'
10 *Foucha, supra*, at 80, where a special justification, such as harm-
11 threatening mental illness, outweighs the 'individual's constitutionally
12 protected interest in avoiding physical restraint.' *Kansas v. Hendricks*,
13 521 U.S. 346, 356 (1997).

14 *Id.* Ultimately, however, the Court declined to decide whether a statute permitting
15 indefinite detention would violate the Due Process Clause. Instead, the Court
16 employed the constitutional avoidance canon to read implicit limits into the statute,
17 requiring release after detention became sufficiently prolonged. *Id.* at 699.

18 Following *Zadvydas*, the Ninth Circuit applied similar reasoning to
19 § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
20 Employing the constitutional avoidance canon, the Ninth Circuit held that
21 § 1225(b) implicitly entitled detained immigrants to bond hearings every six
22 months. *Id.*

23 The Supreme Court overruled that precedent in *Jennings v. Rodriguez*,
24 holding that the statute does not entitle detainees to bond hearings or otherwise
25 impose "any limit on the length of detention." 583 U.S. 281, 297 (2018). But while
26 *Jennings* held that § 1225(b) imposes no statutory limit on the length of detention,
27 it reserved the question of whether prolonged, mandatory detention without bond
28 hearings violates due process. *Id.* at 312.

Finally, the Supreme Court held in *Demore v. Kim* that at least some statutes
mandating detention during immigration proceedings do not automatically violate
the Due Process Clause. 538 U.S. 510, 513 (2003). *Demore* addressed 8 U.S.C.
§ 1226(c), which mandates detention without a bond hearing for persons with

1 certain criminal convictions. *Id.* The Court upheld § 1226(c) in a 5-4 opinion based
2 on (1) the government interests justifying the detention of immigrants with certain,
3 aggravated criminal convictions, and (2) the relative brevity of detention in most
4 cases, with the vast majority taking only about five months. *Id.* at 517–31. Justice
5 Kennedy supplied a deciding vote. His concurrence left open the possibility that
6 individual immigrants could be “entitled to an individualized determination as to
7 his risk of flight and dangerousness if the continued detention became unreasonable
8 or unjustified.” *Id.* at 532–33.

9 “In the wake of *Jennings*,” *Zadvydas*, and *Demore*, “district courts have
10 grappled with how to address due process challenges to prolonged mandatory
11 detention under § 1225(b).” *Banda*, 385 F. Supp. 3d at 1116. But after a full
12 evaluation, “[n]early all district courts that have considered the issue agree that
13 prolonged mandatory detention pending removal proceedings, without a bond
14 hearing, will—at some point—violate the right to due process.” *Id.* (cleaned up)
15 (collecting cases).

16 These Courts have relied on the due process concerns recognized in
17 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at
18 1113–17; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at
19 *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in *Jennings*’ wake, those
20 considerations raise “grave doubts that any statute that allows for arbitrary
21 prolonged detention without any process is constitutional or that those who founded
22 our democracy precisely to protect against the government’s arbitrary deprivation
23 of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir.
24 2018).

25 Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held
26 only that the statute itself did not impose any limits on detention. It “did not
27 foreclose as-applied constitutional challenges to detention under” mandatory-
28 detention statutes. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209

(3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention during immigration proceedings does not necessarily or inherently violate the Due Process Clause, particularly when the detention has an expected duration of only about five months. *Id.* at 208–11. But many persons detained under § 1225(b)—like Mr. Mubanga—do not have criminal convictions. And as Justice Kennedy’s concurrence made clear, *Demore* does not prevent immigrants from arguing that sufficiently prolonged detention violates due process in their individual cases. *See id.*¹

Thus, this Court should hold that sufficiently prolonged detention violates the Due Process Clause, as most courts have. *See, e.g., Gao v. LaRose*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal. Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.); *Mardian v. Mayorkas*, 25-cv-3467-JLS; *Raeva v. Mayorkas*, 25-cv-3175-JO; *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025); *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D. Wash. 2023).

C. Courts have reached different conclusions about when immigration detention becomes indefinitely prolonged, but Mr. Mubanga would prevail under any standard.

Though courts agree that due process procedurally mandates a bond hearing when detention grows unreasonably prolonged, they disagree about how to assess

¹ The Supreme Court’s later decision in *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), is also inapposite, because it addressed only immigrants’ due process rights in deportation proceedings—i.e., the process due when noncitizens seek to stay in the country instead of being removed. *See Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7–9 (W.D. Tex. Sept. 22, 2025). It does not purport to hold that immigrants have no constitutional right to due process before the government holds them indefinitely in immigration detention. *Id.*

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 petitioner] to a bond hearing.” *Rodriguez v. Nielsen*, No. 18-CV-04187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019). In that case, Mr. Mubanga would automatically qualify, as he has been detained for well over a year.

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

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

Id. Some courts also consider:

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

Id. Other courts have rejected the fourth and fifth factors, holding that they are “not particularly suited to assisting the Court in determining whether detention has become unreasonable and due process requires a bond hearing.” *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022); *accord Sanchez-Rivera*, 2023 WL 139801, at *5–6.² Mr. Mubanga would prevail under any of these factors tests.

First, the “most important factor,” the length of detention, strongly favors Mr. Mubanga. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, “[i]t is

² Courts also disagree about whether to account for any criminal convictions that have led to the deportation. *Sanchez-Rivera*, 2023 WL 139801, at *5–6. But such factors—if appropriate at all—are irrelevant where, as here, the person is not being removed as a result of criminal convictions.

important to bear in mind the context: The detention that is being examined here is the detention of a human being who has never been found to pose a danger to the community or to be likely to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. 2019). With that context, courts have granted bond hearings for persons detained between nine and eleven months. *See Ashemuke v. ICE Field Off. Dir.*, No. C23-1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D. Wash. Feb. 29, 2024), *report and recommendation adopted*, No. C23-1592-RSL, 2024 WL 1676681 (W.D. Wash. Apr. 18, 2024) (“approximately eleven months”); *Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (“over nine months”); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20, 2018) (“more than nine months”); *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at *2 (N.D. Cal. Jan. 8, 2020) (“nearly nine months”). Mr. Mubanga has been detained for even longer—over 16 months. Exh. A at ¶ 2. This factor therefore clearly favors a bond hearing.

Second, Mr. Mubanga has reason to anticipate significant future detention. He was ordered removed in October 2025 and is currently appealing his asylum claim to the BIA. Exh. A at ¶ 3. And if Mr. Mubanga loses, he plans to appeal to the Ninth Circuit. *Id.* BIA appeals, on their own, can take months. *See Banda*, 385 F. Supp. 3d at 1119. All told, “[t]his process may take up to two years or longer.” *Id.* Because “Petitioner’s future detention can last several more months or even years[,]” this factor favors Mr. Mubanga. *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

Third, the delay factor is neutral. There is no indication that Mr. Mubanga engaged in any unreasonable delay.

Fourth, Mr. Mubanga’s conditions of confinement weigh in favor of a bond hearing. At Imperial Regional Detention Center (“IRDC”), his confinement is indistinguishable from penal confinement and the conditions are challenging for him. Reports from IMDC have indicated drinking water causes skin rashes and

1 must be boiled before drinking. Rob Bonta et al., *Immigration Detention in*
2 *California: A Review of Conditions of Confinement*, California Department of
3 Justice 96, 103, (2026), [https://oag.ca.gov/system/files/media/immigration-](https://oag.ca.gov/system/files/media/immigration-detention-2026.pdf)
4 [detention-2026.pdf](https://oag.ca.gov/system/files/media/immigration-detention-2026.pdf). Two detainee deaths have occurred at IRDC during the time
5 Mr. Mubanga has been in custody—one of them from heart issues. *Id.* at 8. In these
6 jail-like conditions, Mr. Mubanga must work to keep his blood pressure in check
7 and hope that the medication he takes daily for both his blood pressure and his heart
8 palpitations will help him avoid a similar fate. Exh. A at ¶ 7.

9 Fifth, the chances that continued proceedings will result in a different final
10 order does not apply here. There is not yet any final order in Mr. Mubanga’s case.

11 Under any test, then, Mr. Mubanga is entitled, at the very least, to a bond
12 hearing. Mr. Mubanga’s case, especially, demonstrates the importance of
13 procedural protections: he was incredibly close to *actually* being afforded
14 procedure, but he never was and still has not been. Though two bond hearings have
15 previously been set for Mr. Mubanga during the sixteen months of his detention,
16 no court or judge has yet found him to be either a flight risk or a danger. During the
17 second hearing, it was the immigration judge’s own refusal to provide an interpreter
18 in the only language that Mr. Mubanga competently understands that resulted in a
19 denial of procedure. But because he has attempted to receive such procedure—now
20 twice—to no avail, and at no fault of his own, immediate release unless and until
21 Respondents can establish that he is a danger or a flight risk is the only remedy that
22 will prevent this due process violation from continuing.

23 **II. Mr. Mubanga’s continued, prolonged, and potentially indefinite**
24 **immigration detention violates substantive due process.**

25 In light of the failed (and, therefore, effectively absent) procedures where no
26 valid reason for such continued detention has been found, the length of
27 Mr. Mubanga’s detention violates his substantive due process rights.

28 “Freedom from imprisonment—from government custody, detention, or

1 other forms of physical restraint—lies at the heart of the liberty that [the Due
2 Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). “A due
3 process violation occurs when detention becomes punitive rather than regulatory,
4 meaning there is no regulatory purpose that can rationally be assigned to the
5 detention or the detention appears excessive in relation to its regulatory purpose.”
6 *United States v. Torres*, 995 F. 3d 695, 708 (9th Cir. 2021).

7 Courts have primarily addressed whether prolonged detention violates
8 substantive due process in the context of detention under 8 U.S.C. § 1226(c). The
9 same factors highlighted above from *Sanchez-Rivera*, see Section I.B *supra*, have
10 been applied in the substantive due process context. See *Doe v. Becerra*, 732 F.
11 Supp. 3d 1071, 1080 (N.D. Cal. 2024). It makes sense to extend those analyses to
12 immigrants detained under Section 1225(b): both classes do not have a statutory
13 right to a bond hearing, and both classes are routinely detained pre-final removal
14 order for prolonged and often indefinite periods of time. See 8 U.S.C. §§ 1225(b),
15 1226(c).

16 Mr. Mubanga’s case demonstrates exactly how a violation of procedural due
17 process can lead to a violation of substantive due process. Mr. Mubanga, as of the
18 filing of this brief, has been continuously detained for one year, four months, and
19 nine days. See Exh. A at ¶ 2. Had he been able to proceed with either of the two
20 bond hearings scheduled during that time, it is possible he would have already been
21 released, and his pro se petition for habeas corpus would have never been filed.
22 Instead, Mr. Mubanga did not receive a hearing. An immigration judge has never
23 found him to be a flight risk or a danger. And yet, he remained detained. That
24 detention has now extended to a length that violates his substantive due process
25 rights.

26 The “equitable and flexible nature of habeas relief” affords district courts
27 significant discretion over the appropriate remedies for violations of law and the
28 Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020); see also

1 *Schlup v. Delo*, 513 U.S. 298, 319 (1995) (“[H]abeas corpus is, at its core, an
2 equitable remedy”). This Court should order a remedy that fully addresses the
3 statutory and constitutional violations in this case and is efficient to administer.
4 *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the habeas statute “does not limit
5 the relief that may be granted to discharge of the applicant from physical custody.
6 Its mandate is broad with respect to the relief that may be granted”). In this case,
7 that remedy is immediate release from custody.

8 **CLAIM AND PRAYER FOR RELIEF**

9 Here, because ordering a bond hearing before a randomly selected IJ would
10 not immediately redress the statutory and constitutional violations present in this
11 matter and only perpetrate them, Petitioner urges this Court to order his immediate
12 release unless and until Respondents can establish by clear and convincing evidence
13 that he poses a danger or a flight risk. “In recent months, courts across the country
14 have ordered the release of detainees in similar situations.” *Moctezuma v. Henkey*,
15 No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given
16 that the government’s repeated use of unlawful detention policies across the
17 country, causing petitioners to “sit in jail waiting for a judicial decision,” the court
18 would order immediate release instead of causing additional delay through a bond
19 hearing) (citing *Lepe v. Andrews*, 801 F. Supp. 3d 1104 (E.D. Cal. 2025); *J.U. v.*
20 *Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025);
21 *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11,
22 2025); *Pinchi v. Noem*, No. 25-cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July
23 4, 2025). *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13-14
24 (W.D. Tex. Oct. 2, 2025) (“Without a legitimate interest in her detention, immediate
25 release appropriately remedies Respondents’ violation of [Petitioner’s] due process
26 rights through her continued detention.”). Thus, this Court should order
27
28

1 Mr. Mubanga's immediate release unless and until Respondents can show by clear
2 and convincing evidence that he poses a danger or a flight risk.

3
4 Respectfully submitted,

5
6 Dated: May 21, 2026

s/ Kara Hartzler

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