

1 **Kara Hartzler**
2 Cal. Bar No. 293751
3 **Federal Defenders of San Diego, Inc.**
4 225 Broadway, Suite 900
5 San Diego, California 92101-5030
6 Telephone: (619) 234-8467
7 Facsimile: (619) 687-2666
8 Kara_hartzler@fd.org

9 Attorneys for Petitioner

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

12 AMOS NKONGOLO MUBANGA,

13 Petitioner,

14 v.

15 MARKWAYNE MULLIN, Secretary of
16 the Department of Homeland Security, et
17 al.

18 Respondents.

No.: 26-cv-2565-JO-AHG

**Reply in support of
petition for writ of
habeas corpus**

1 In his supplemental brief, Mr. Mubanga explained that he is an asylum
2 seeker who has been subject to prolonged detention since he arrived in the United
3 States 16 months ago. He argued, as requested by this Court, that both substantive
4 and procedural due process support his immediate release from detention.

5 In its return, the government “concedes that this Court should order that
6 Petitioner receive a bond hearing, where the government would bear the burden of
7 proof of establishing, by clear and convincing evidence, that Petitioner poses a
8 danger to the community or a risk of flight.” ECF 12 at 2. They even
9 acknowledge “this Court has repeatedly inferred a constitutional right against
10 prolonged mandatory detention.” ECF 12 at 10.

11 But Respondents do not meaningfully address any of the arguments made
12 in Mr. Mubanga’s supplemental brief in support of his release. Mr. Mubanga first
13 argues that denying him an interpreter in a language he understands violated his
14 procedural due process rights. The government does not engage with this
15 argument except to say that Mr. Mubanga has no due process rights other than
16 those afforded by statute. *See* ECF 12 at 8. But the right to a full and fair hearing
17 in a language one understands is an established right. *See* ECF 10 at 4 (citing
18 *Perez-Laston v. Immigr. & Naturalization Serv.*, 208 F.3d 773, 778 (9th Cir.
19 2000)). The IJ’s refusal to believe Mr. Mubanga only understands Lingala clearly
20 deprived him of this right. Even when trying to respond to this argument,
21 Respondents ignore the actual issue put forth in Mr. Mubanga’s supplemental
22 brief (that a lack of interpretation violated procedural due process) and instead
23 merely concede that Mr. Mubanga has a right to proper interpretation. *See* ECF 12
24 at 9. It follows that if he has this right (as the government concedes) and did not
25 receive it (as the government concedes), his procedural due process rights have
26 clearly been violated.

27 Next, Respondents ignore Mr. Mubanga’s argument that his right to
28 substantive due process was violated. He first argued that substantive due process

1 findings in the context of § 1226(c) should be extended here to prolonged
2 detention under § 1225(b). *See* ECF 10 at 13. Instead of addressing this point,
3 Respondents provide some case law generally related to substantive due process
4 and caution this Court to avoid new rulings related to substantive due process. *See*
5 ECF 12 at 9. Nothing contained in Respondents' return addresses Mr. Mubanga's
6 argument that continual violations of procedural due process can lead to a
7 violation of substantive due process. The government simply alleges Petitioner
8 did not identify any liberty interest implicating due process. *See* ECF 12 at 9. Yet
9 Petitioner's liberty interest was not only laid out but also obvious through his
10 filing of a habeas petition: his right to freedom from imprisonment without due
11 process of law. *See* ECF 10 at 13.

12 At no point in its return does the government address any of the factors that
13 help a court determine whether a noncitizen has been subject to prolonged,
14 unconstitutional detention. Several of those factors weigh in Mr. Mubanga's
15 favor, including the fact that Mr. Mubanga has been detained for 16 months. *See*
16 ECF 10 at 10–12. The government does not contest—let alone mention—any of
17 Petitioner's facts and arguments addressing these factors.

18 Because Respondents address none of the above arguments, they have
19 waived, or at least forfeited, their opportunity to contest the due process violations
20 or argue against immediate release. *See United States v. Castillo-Marin*, 684 F.3d
21 914, 919 (9th Cir. 2012) (determining that the government concedes an argument
22 that “was available at the time it filed its answering brief”) (citing *United States v.*
23 *McEnry*, 659 F.3d 893, 902 (9th Cir. 2011)).

24 Even if this Court finds Respondents have not waived the due process
25 issues, their arguments fail. The government's return focuses on two unsuccessful
26 arguments: (1) an argument about jurisdiction, and (2) an argument that
27 Petitioner's detention is lawful and constitutional. *See* ECF 12 at 3, 4.

Courts have routinely dismissed the government’s argument about jurisdiction. “Though 8 U.S.C § 1252(g), precludes this Court from exercising jurisdiction over the executive’s decision to ‘commence proceedings, adjudicate cases, or execute removal orders against any alien,’ this Court has habeas jurisdiction over the issues raised here, namely the lawfulness of [Mr. Mubanga’s] continued detention.” *Y.T.D. v. Andrews*, No. 25-CV-01100-JLT, 2025 WL 2675760, at *5 (E.D. Cal. Sept. 18, 2025). Many courts, including ones in this District, agree. *See, e.g., Markov v. LaRose*, No. 25-CV-3811-JLS, 2026 WL 92069, at *1–2 (S.D. Cal. Jan. 13, 2026) (finding that § 1252(g) does not bar due process claims and does not strip the Court of jurisdiction).

Second, Respondents acknowledge that their position regarding Petitioner’s lack of constitutional rights has been routinely rejected by courts. *See* ECF 12 at 10. Broadly, the government argues that, because Mr. Mubanga does not have a statutory right to due process, he has no right to due process at all. *See* ECF 12 at 5–8. The government attempts to interpret case law in support of their position, but those interpretations fail.

Respondents first cite to *Jennings v. Rodriguez*, 583 U.S. 281 (2018), to say that § 1225(b) does not provide any mechanism for release. This argument ignores the fact that Mr. Mubanga is challenging violations of his rights under the Due Process Clause of the Constitution.

Next, *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207-09 (1953), is not on point. “The *Mezei* Court explicitly grounded its decision in the special circumstances of a national emergency and the determination by the Attorney General that Mezei presented a threat to national security.” *Rosales-Garcia v. Holland*, 322 F.3d 386, 413–14 (6th Cir. 2003); *accord Amado v. USDOJ*, No. 25CV2687-LL(DDL), 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025) (“*Mezei* involved a noncitizen who was permanently excluded from the

1 United States on security grounds, not a detainee raising their due process rights
2 in the context of detention without a bond hearing.”).

3 The government then uses *Department of Homeland Security v.*
4 *Thuraissigiam*, 591 U.S. 103, 138–40 (2020), to argue that arriving immigrants
5 like Petitioner have no due process rights. This Court should reject that disturbing
6 argument, as “[m]ost courts” have. *Gao v. LaRose*, No. 25-CV-2084-RSH-SBC,
7 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *see, e.g., Abdul Kadir v.*
8 *Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal. Oct. 15,
9 2025). Additionally, the core issue in *Thuraissigiam* does not apply here:
10 “*Thuraissigiam* addressed a noncitizen's right to challenge *admission*, not
11 detention.” *Abdul Kadir*, 2025 WL 2932654, at *4; *accord Cong v. Noem*, 2026
12 WL 76566, at *3 (“Though *Thuraissigiam* limits an arriving noncitizen's due
13 process rights regarding admission, the court did not address the issue of
14 prolonged detention.”).

15 If the government were right that immigrants have no due process rights
16 against arbitrary detention regardless of length, then the Ninth Circuit could not
17 have harbored “grave doubts that any statute that allows for arbitrary prolonged
18 detention without any process is constitutional.” *Rodriguez v. Marin*, 909 F.3d
19 252, 256 (9th Cir. 2018). That the Court did have such doubt shows that this
20 remains an open question, one that this Court should continue to answer in
21 Petitioner’s favor. Because the government’s argument completely ignores the
22 constitutional issues posed by such detention, it should be dismissed by this
23 Court.

1 For all of the reasons stated in Petitioner's supplemental brief and above,
2 this Court should grant Mr. Mubanga's petition and order immediate release.

3
4 Respectfully submitted,

5 Dated: June 2, 2026

6 s/ Kara Hartzler

7 Federal Defenders of San Diego, Inc.

8 Attorneys for Petitioner

9 Email: kara_hartzler@fd.org
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28