ADAM GORDON
United States Attorney
JACOB T. METZGER
Special Assistant U.S. Attorney
Ohio State Bar No. 104783
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 546-8693
Mobile: (619) 885-2119
Facsimile: (619) 546-7751
Email: jacob.metzger@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AMOS NKONGOLO MUBANGA,

Petitioner,

v.

JEREMY CASEY,

Respondents.

Case No. 26-cv-02565-JO-JLB

SUPPLEMENTAL BRIEFING RE: ORDER ECF NO. 15

On June 4, 2026, the Court issued an order directing "Respondents to submit supplemental briefing on the following issues by June 12, 2026: (1) identify and address any individualized concerns regarding Petitioner's danger to the community or flight risk, including the factual basis for any such concerns; (2) optionally, address the issue of appropriate remedies in this case." ECF No. 15. Respondents provide the following information pursuant to the Court's June 4, 2026, order.

Petitioner was detained for unlawful entry when he entered the United States. *See* Exhibit 1 (I-213). At the time he was detained, January 13, 2025, the CBP One app was

available, and Petitioner had no set appointment, but chose to enter illegally. Petitioner's only connection within the United States appears to be a sister. *See* Exhibit 1; Exhibit 3 at 4-11 (IJ Oral Decision - Filed Under Seal). There is no evidence presented that Petitioner has any potential professional connections inside the United States. An immigration judge (IJ), weighing the appropriate factors, has previously ordered Petitioner removed to the Democratic Republic of Congo, his home country. *See* Exhibit 2 (IJ Order of Removal 10/5/2025).

An IJ has found Petitioner not credible and that his testimony in his merits hearing was inconsistent with what Petitioner had noted on his immigration forms. *See* Exhibit 3 at 4-11. Further, Petitioner has seemingly made misrepresentations regarding his French fluency with the IJ, an asylum officer, and this Court. *See* Exhibit 5 at 19:30-21:54 (April 15, 2026 Bond Hearing Audio Recording - Filed Under Seal); *See* ECF No. 10 at 16-18. During Petitioner's first bond hearing on April 7, 2025, the IJ asked Petitioner what language he understood best, Petitioner said French. *See* Exhibit 4 at 0:35-1:30 (April 7, 2026 Bond Hearing Audio Recording - Filed Under Seal). Throughout the first bond hearing, Petitioner did not make a reference regarding any issues regarding the French translation to the IJ. *See generally* Exhibit 4. At the conclusion of the first bond hearing, using a certified French interpreter, Petitioner accurately recited the document requirements of the IJ to prepare Petitioner's second bond hearing. *Id.*

During his second bond hearing on April 15, Petitioner claimed not to know French. *See* Exhibit 5 at 19:30-21:54. At the start of the second bond hearing, Petitioner, again, informed the IJ he knew French. *See* Exhibit 5 at 0:00-1:30. Later it is disclosed that the Petitioner knows Kituba and claims he learned French while detained but not well enough to speak French during the critical fear interview. *Id.* at 18:29-19:17; 26:00-27:30. At the conclusion of the hearing, Petitioner conceded that he spoke French during the bond hearing. *Id.* at 39:30-40:34. Petitioner conceded that he understood the Court's French interpreter. *Id.* at 40:34-40:45. Petitioner conceded that he provided details

answers in French during the bond hearing. *Id* at 40:45-41:00. Petitioner conceded that he learned French in his home country. *Id.* at 41:00-41:20. At the conclusion of the second bond hearing, the immigration judge found that Petitioner understood French fluently. *Id.* at 56:30-58:34.[1] Petitioner's representations to this Court, the IJ, and the asylum officer that he does not understand French or understands very little French lack credibility and indicate a risk of flight. *See* ECF No. 10 at 16-18; Exhibit 5 at 18:30-21:54.

Regarding the appropriate remedy in this case, Respondent's contend that in a case where Petitioner's detention is mandated by 8 U.S.C. § 1225(b) and that the detention has become prolonged, and where the Court determines that a remedy is required, the appropriate remedy is an individualized bond hearing, not immediate release.

Here, even assuming Petitioner's detention has become constitutionally problematic due to its duration, the Supreme Court has made it clear that Congress authorized detention under 8 U.S.C. § 1225(b). Section 1225(b) "mandate[s] detention of applicants for admission until [removal] proceedings have concluded." *Jennings*, 583 U.S. at 297. Once removal proceedings end, "detention under [§ 1225(b)] must end as well. Until that point, however, nothing in the statutory text imposes any limit on the length of detention. *Id.* The Supreme Court specifically noted that "[n]othing in the text of §1225(b)(1) or §1225(b)(2) even hints that those provisions restrict detention after six months," and neither statute "says anything whatsoever about bond hearings." 583 U.S. at 297-98; *see Dep't of Homeland Sec. v. Thuraissigiam,* 591 U.S. 103, 107, 140 S. Ct. 1959, 1964 (2020) (reiterating that "an alien at the threshold of initial entry … has no entitlement to procedural rights other than those afforded by statute.").

[1] At his subsequent merits hearing, after Petitioner had notified the IJ of his preferred use of Lingala, a Lingala interpreter was provided.

Prior to the Supreme Court's decision in *Jennings*, the Ninth Circuit "mandated certain procedures for detainees under §§ 1225(b), 1226(c), and 1231(a)(6) as a matter of constitutional avoidance, … premised on the lack of process that was afforded to those aliens *as compared to § 1226(a) detainees*." *Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022) (emphasis in original). The Ninth Circuit has repeatedly held that when due process concerns arise from prolonged immigration detention, the constitutional defect is cured by providing a bond hearing. *See Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013). *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011); *Casas-Castrillon v. Department of Homeland Security*, 535 F.3d at 951–52; *Diouf v. Napolitano*, 634 F.3d at 1091–92. The appropriate remedy therefore is not outright release, but rather the procedural protection necessary to remedy the constitutional deficiency, an individualized bond hearing. Notably, the Ninth Circuit has recently noted that "[b]oth [the Ninth Circuit] and the Supreme Court have repeatedly declined to decide constitutional challenges to bond hearing procedures in the immigration detention context, whether the claims were brought by an alien held under § 1226(a) or another provision." *Diaz*, 53 F.4th at 1203.

Respondents' position is that this Court should order that Petitioner receive a bond hearing before an immigration judge, where the Department of Homeland Security (DHS) would bear the burden of proof establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or a risk of flight.

Dated: June 12, 2026

Respectfully submitted,

ADAM GORDON
United States Attorney

s/ Jacob T. Metzger
JACOB T. METZGER
Special Assistant U.S. Attorney
Attorney for Respondents