HANNAH BASALONE
District of Virginia State Bar No. 96875
FEDERAL DEFENDERS OF SAN DIEGO, INC.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
Hannah_Basalone@fd.org

Attorneys for Mr. Mubanga [redacted]

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.

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

Response to Supplemental Briefing Re. Court's Order [ECF No. 16]

This Court ordered Respondents to submit supplemental briefing on (1) any individualized concerns regarding Mr. Mubanga's "danger to the community or flight risk, including the factual basis for any such concerns" and (2) "optionally, address the issue of appropriate remedies in this case." ECF Minute Order 15. Because Respondents could not point to individualized concerns, this Court should order Mr. Mubanga's immediate release.

I. The government did not identify any individualized concerns.

In Respondents' supplemental briefing, they do not directly address either Mr. Mubanga's danger to the community or flight risk in any meaningful detail. *See* ECF 17 at 1–2. There is no information provided that would support any finding of danger, and the few details provided do not demonstrate how Mr. Mubanga would be a flight risk.

Respondents first note that Mr. Mubanga entered the United States illegally. *Id.* But many courts, including the BIA, have determined that a "noncitizen's unlawful status cannot provide a legitimate consideration" to detain a noncitizen "given that every individual who appears before an Immigration Judge for custody redetermination lacks lawful status." *Alvarado Lopez v. Dillman*, No. 25-cv-2456-LMB-LRV, 2026 WL 688958, at *6 (E.D. Va. Mar. 11, 20026); *see also Chavarria Mejia v. Crawford*, No. 26-cv-253-LMB-LRV, 2026 WL 819603, at *5 (E.D. Va. Mar. 25, 2026); *Lemus Crispin v. Bondi*, No. 26-cv-191-LMB-WEF, 2026 WL 768859, at *5–6 (E.D. Va. Mar. 18, 2026); *Segura v. Bondi*, No. 26-cv-304-LMB-WEF, 2026 WL 688862, at *6 (E.D. Va. Mar. 11, 2026); *Argueta-Portillo v. Bondi, et al.*, No. 26-cv-122-MSN-LRV, ECF No. 16 (E.D. Va. Mar. 2, 2026). The BIA has continued to cite *Matter of Patel*, 15 I. & N. Dec. 666, 666–67 (BIA 1976), for the proposition that "factors unique to each alien must be evaluated in determining suitability for release on custody." *In re Helia de la Cruz-Palencia*, 2011 WL 2261251, at *1 (BIA May 13, 2011) (unpublished).

The government then says that Mr. Mubanga does not have any "potential professional connections" and only knows his sister in the United States. By definition and through no fault of their own, nearly all noncitizens seeking habeas relief will have come here on their own to seek asylum. They will have little to no family here and will not own property in the United States. But that does not affirmatively prove that all these immigrants are flight risks; it only proves that they fled their home country alone and in a hurry, as many asylum seekers are required to do, and have been in detention since their arrival. Given that the government has the burden to affirmatively *prove* risk of flight by clear and convincing evidence, these factors are not proper grounds for demonstrating that. *See N.A. v. Warden*, No. 25-cv-03007-MBK, 2026 WL 734587, at *8 (C.D. Cal. Feb. 20, 2026), *report and recommendation adopted sub nom. N.A. v. Warden*, No. 25-cv-03007-MBK, 2026 WL 734585 (C.D. Cal. Mar. 12, 2026) (opining that short length of residence did not meet the government's burden because, while "undoubtedly relevant to flight risk," it is "also true of virtually every asylum seeker apprehended at the border, many of whom the Government releases on bond").

Respondents then cite the fact that an immigration judge ("IJ") denied his asylum application as a relevant individualized concern. But the mere fact that there is a final order of removal in a detention case does not meet the threshold of clear and convincing evidence sufficient to justify detention. *Singh v. Holder*, 638 F.3d 1196, 1205 (9th Cir. 2011). While a final removal order is relevant, "it alone does not constitute clear and convincing evidence that [the petitioner] presented a flight risk justifying denial of bond." *Id.* Based on *Singh*, Mr. Mubanga could not be found to be a flight risk just because his case has been preliminarily decided by an IJ and is on appeal.

Finally, the government spends the majority of its brief attempting to argue that Mr. Mubanga has made misrepresentations about his French fluency. *See* ECF 17 at 2–3. To support this, they cite the transcript of a bond hearing held in front of

an IJ on April 15, 2025. *See* ECF 17-1 at Exhibit 5. But the government's citations distort the actual exchange between Mr. Mubanga and the IJ. The cultural assumptions and misunderstandings present in their exchange provide an excellent example of the challenges rare language speakers constantly face when trying to apply for asylum and seek a better life in the United States.

During the hearing on April 15, 2025, Mr. Mubanga repeatedly tried to explain what languages he speaks best and how his French has improved since coming to the United States. He tells the IJ that the language he speaks best is Kibua. Partial Transcript of Mr. Mubanga's April 15, 2025 Bond Hearing, Exhibit A at 23:37–23:50. He also explains that he told this to the asylum officer during his credible fear interview, but the officer put Kituba instead of Kibua. *Id* at 24:43. Even though the IJ erroneously believes that "Kibua . . . is a variation on the language of Kituba," *id.* at 56:29, Kibua (also known as Bwa, Boa, Bua, Or Kibwa) is an entirely separate Bantu language spoken in the Democratic Republic of the Congo.[1] Mr. Mubanga states many times throughout the hearing that "[t]he language of [his] mother is Kibua." *Id.* at 28:05; *see id.* at 31:29; 36:30; 52:57. The IJ impatiently and repeatedly asks Mr. Mubanga, through a French translator, questions about the languages he speaks. *Id.* at 22:02, 23:37, 27:33, 31:47, 35:55, 51:20. He answers each time, and even lists out all the languages he speaks: "Kibua, the French that I tried to learn to speak best, and also Lingala." *Id.* at 36:30.

Contrary to Respondents' brief, Mr. Mubanga never claims not to know French. ECF 17 at 2; *cf.* Exh. A at 26:05, 40:17. Mr. Mubanga had been detained for over three months by the time this bond hearing occurred—plenty of time to

[1] Information about Bwa can be found here: https://en.wikipedia.org/wiki/Bwa_language. Bantu languages are often referred to using the prefix "ki-." *See Bantu Languages: Language structure*, WIKIPEDIA (last updated June 9, 2026) https://en.wikipedia.org/wiki/Bantu_languages#cite_ref-36; *Naming African Languages in English*, ORVILLE JENKINS (last updated Dec. 27, 2007) http://orvillejenkins.com/languages/namingafricanlanguages.html.

improve his French. *See* ECF 17-1 at 2. Mr. Mubanga repeatedly tells the IJ that he has worked on learning French better since being detained. Exh. A at 24:43; 26:05; 29:30; 40:17; 50:56; 1:02:35. He even clarifies that he learned some French in his country, but he has tried to improve his skills since coming here. *Id.* at 1:02:35. Ultimately, the IJ finds that he is a flight risk—a decision that seems wrapped up in her misunderstanding of languages spoken in Democratic Republic of the Congo. *See id.* at 56:29. For instance, earlier in the hearing, the IJ notes that the official language of Democratic Republic of the Congo is French, seemingly to support her assumption that Mr. Mubanga should therefore fluently speak French. *See* Exh. A at 34:06. This assumption ignores the fact that there are over 200 distinct languages spoken in Democratic Republic of the Congo, and the country has four additional national languages in addition to the official language. *See Languages of the Democratic Republic of the Congo*, Wikipedia, available at: https://en.wikipedia.org/wiki/Languages_of_the_Democratic_Republic_of_the_Congo.

This Court need only read several awkward and disjointed excerpts from the transcript to see that Mr. Mubanga was not fluent in French:

> The reason why I didn't discuss with the officer is because the language I'm speaking now I learned that language, but they put Kituba is the language I speak. In my country we do not speak Kituba. Instead I put that the reason why is because I am able to explain myself.

Exh. A at 23:00.

> No I didn't refuse. When he asked the question I said I speak my mother language, maybe he doesn't understand when I was speaking but when he asked the question I answered. . . . After I keep saying Kibua Kibua that maybe she understand and after that she had a French interpreter but I kept saying Kibua Kibua. Maybe she understand.

Exh. A at 30:51.

Ultimately, Mr. Mubanga understood that he could communicate better if he is able to speak broken French than if he spoke Kibua or Lingala without an

interpreter. *Id.* Indeed, it would make no sense that Mr. Mubanga would want to delay his proceedings or hurt his chances at being granted asylum by misrepresenting his language abilities. Mr. Mubanga is not the first rare-language speaker to be forced to speak French when this is not their first or best language.[2] Thus, the IJ's unsupported assumptions do not show that Mr. Mubanga was being untruthful about his language skills.

Even if the government's portrayal of the language issues were correct, Mr. Mubanga's French fluency is not relevant to his risk of flight. The Ninth Circuit has held that "[t]o determine whether an alien is a danger to the community or a risk of flight, an IJ weighs nine factors under BIA precedent." *Martinez*, 124 F.4th at 783. Language ability is not one of those factors. Moreover, determinations of risk of flight and dangerousness during "[a] bond hearing fail[] to comport with due process where an Immigration Judge relies on considerations that would lead to an automatic denial of bond in most, if not all, cases or on considerations that are not rationally related to whether a petitioner is a risk of flight or danger to the community[.]" Exhibit B, Order, *Lozano Rosales v. Simon*, No. 26-cv-86-LMB at 1. Many, if not most, noncitizens that seek release in immigration court do not speak English and language ability is not rationally related to whether a noncitizen poses a risk of flight. One has nothing to do with the other. Therefore, the language arguments made by Respondents do not support a risk of flight and are not relevant to this Court's determination.

II. The appropriate remedy is immediate release.

Regarding release, Respondents assert that Mr. Mubanga is detained under 8 U.S.C. § 1225(b) but take the position that "this Court should order that Petition receive an individualized bond hearing before an immigration judge, where [DHS]

---

[2] *See Seeking asylum in the U.S. is not easy. It's harder when you speak a rare language*, WWNO – New Orleans Public Radio (Feb. 3, 2022), https://www.wwno.org/immigration/2022-02-03/seeking-asylum-in-the-u-s-is-not-easy-its-harder-when-you-speak-a-rare-language.

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." ECF 17 at 4. Respondents claim this is the correct remedy because it is what would "remedy the constitutional deficiency." *Id.* But, as asserted in Mr. Mubanga's previous filings, the government has violated both procedural and substantive due process by detaining Mr. Mubanga for now over seventeen months. Many courts across the country have granted release as the appropriate remedy in such situations. *See Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that the government's repeated use of unlawful detention policies across the country, causing petitioners to "sit in jail waiting for a judicial decision," the court would order immediate release instead of causing additional delay through a bond hearing) (citing *Lepe v. Andrews*, 801 F. Supp. 3d 1104 (E.D. Cal. 2025); *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13-14 (W.D. Tex. Oct. 2, 2025) ("Without a legitimate interest in her detention, immediate release appropriately remedies Respondents' violation of [Petitioner's] due process rights through her continued detention.").

Additionally, Respondents claim a bond hearing will provide the appropriate relief, but the individualized information provided to this Court of Mr. Mubanga's danger to the community and flight risk falls woefully short of the clear and convincing evidence that would need to be shown at such a bond hearing. *See* ECF 17 at 1–2. Ordering a bond hearing would only act to prolong Mr. Mubanga's detention and, therefore, the due process violations that he has suffered.

For these reasons and the reasons provided in previous filings, this Court should order Mr. Mubanga's immediate release.

Respectfully submitted,

Dated: June 17, 2026

/s/ Hannah Basalone
Hanah Basalone
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Mubanga
Email: Hannah_Basalone@fd.org