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

12 SAKIROU BOUKOUBONGUE,

13 Petitioner,

14 v.

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

18 Respondents.

No.: 26-cv-2491-JO-VET

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

1 In his supplemental brief, Mr. BoukouBongue explained that he is an  
2 asylum seeker who has been subject to prolonged detention since he arrived in the  
3 United States over 15 months ago. He argued, as requested by this Court, that  
4 both substantive and procedural due process support his immediate release from  
5 detention.

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

12 But Respondents do not meaningfully address any of the arguments made  
13 in Mr. BoukouBongue’s supplemental brief in support of his release.

14 Respondents ignore Mr. BoukouBongue’s argument that his right to  
15 substantive due process was violated. He first argues that substantive due process  
16 findings in the context of § 1226(c) should be extended here to prolonged  
17 detention under § 1225(b). *See* ECF 10 at 13. Instead of addressing this point,  
18 Respondents provide some case law generally related to substantive due process  
19 and caution this Court to avoid new rulings related to substantive due process. *See*  
20 ECF 12 at 9. Nothing contained in Respondents’ return addresses Mr.  
21 BoukouBongue’s argument that continual violations of procedural due process  
22 can lead to a violation of substantive due process. The government simply alleges  
23 Petitioner did not identify any liberty interest implicating due process. *See* ECF  
24 12 at 9. Yet Petitioner’s liberty interest was not only laid out but also obvious  
25 through his filing of a habeas petition: his right to freedom from imprisonment  
26 without due process of law. *See* ECF 10 at 13.

27 At no point in its return does the government address any of the factors that  
28 help a court determine whether a noncitizen has been subject to prolonged,

1 unconstitutional detention. Several of those factors weigh in Mr.  
2 BoukouBongue's favor, including the fact that Mr. BoukouBongue has been  
3 detained for over 15 months. *See* ECF 10 at 10–12. The government does not  
4 contest—let alone mention—any of Petitioner's facts and arguments addressing  
5 these factors.

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

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

16 Courts have routinely dismissed the government's argument about  
17 jurisdiction. “Though 8 U.S.C § 1252(g), precludes this Court from exercising  
18 jurisdiction over the executive's decision to ‘commence proceedings, adjudicate  
19 cases, or execute removal orders against any alien,’ this Court has habeas  
20 jurisdiction over the issues raised here, namely the lawfulness of  
21 [Mr. BoukouBongue's] continued detention.” *Y.T.D. v. Andrews*, No. 25-CV-  
22 01100-JLT, 2025 WL 2675760, at \*5 (E.D. Cal. Sept. 18, 2025). Many courts,  
23 including ones in this District, agree. *See, e.g., Markov v. LaRose*, No. 25-CV-  
24 3811-JLS, 2026 WL 92069, at \*1–2 (S.D. Cal. Jan. 13, 2026) (finding that §  
25 1252(g) does not bar due process claims and does not strip the Court of  
26 jurisdiction).

27 Second, Respondents acknowledge that their position regarding Petitioner's  
28 lack of constitutional rights has been routinely rejected by courts. *See* ECF 12 at

1 10. Broadly, the government argues that, because Mr. BoukouBongue does not  
 2 have a statutory right to due process, he has no right to due process at all. *See*  
 3 ECF 12 at 5–8. The government attempts to interpret case law in support of their  
 4 position, but those interpretations fail.

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

9 Next, *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207-09  
 10 (1953), is not on point. “The *Mezei* Court explicitly grounded its decision in the  
 11 special circumstances of a national emergency and the determination by the  
 12 Attorney General that Mezei presented a threat to national security.” *Rosales-*  
 13 *Garcia v. Holland*, 322 F.3d 386, 413–14 (6th Cir. 2003); *accord Amado v.*  
 14 *USDOJ*, No. 25CV2687-LL(DDL), 2025 WL 3079052, at \*5 (S.D. Cal. Nov. 4,  
 15 2025) (“*Mezei* involved a noncitizen who was permanently excluded from the  
 16 United States on security grounds, not a detainee raising their due process rights  
 17 in the context of detention without a bond hearing.”).

18 The government then uses *Department of Homeland Security v.*  
 19 *Thuraissigiam*, 591 U.S. 103, 138–40 (2020), to argue that arriving immigrants  
 20 like Petitioners have no due process rights. This Court should reject that  
 21 disturbing argument, as “[m]ost courts” have. *Gao v. LaRose*, No. 25-CV-2084-  
 22 RSH-SBC, 2025 WL 2770633, at \*3 (S.D. Cal. Sept. 26, 2025); *see, e.g., Abdul*  
 23 *Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at \*4 (S.D. Cal.  
 24 Oct. 15, 2025). Additionally, the core issue in *Thuraissigiam* does not apply here:  
 25 “*Thuraissigiam* addressed a noncitizen's right to challenge *admission*, not  
 26 detention.” *Abdul Kadir*, 2025 WL 2932654, at \*4; *accord Cong v. Noem*, 2026  
 27 WL 76566, at \*3 (“Though *Thuraissigiam* limits an arriving noncitizen's due  
 28

1 process rights regarding admission, the court did not address the issue of  
2 prolonged detention.”).

3 If the government were right that immigrants have no due process rights  
4 against arbitrary detention regardless of length, then the Ninth Circuit could not  
5 have harbored “grave doubts that any statute that allows for arbitrary prolonged  
6 detention without any process is constitutional.” *Rodriguez v. Marin*, 909 F.3d  
7 252, 256 (9th Cir. 2018). That the Court did have such doubt shows that this  
8 remains an open question, one that this Court should continue to answer in  
9 Petitioners’ favor. Because the government’s argument completely ignores the  
10 constitutional issues posed by such detention, it should be dismissed by this  
11 Court.

12 For all of the reasons stated in Petitioner’s supplemental brief and above,  
13 this Court should grant Mr. BoukouBongue’s petition and order immediate  
14 release.

15  
16 Respectfully submitted,

17 Dated: June 2, 2026

s/ Kara Hartzler

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