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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SAKIROU BOUKOUBONGUE,

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-2491-JO-VET

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. BoukouBongue'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. BoukouBongue's immediate release.

I. The government did not identify any individualized concerns.

In Respondents' supplemental briefing, they do not address either Mr. BoukouBongue's danger to the community or flight risk in any meaningful detail. *See* ECF 17 at 2. There is no information provided that would support any finding of danger, and the few details provided do not demonstrate how Mr. BoukouBongue would be a flight risk. Respondents first note that Mr. BoukouBongue 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 turns to the fact that Mr. BoukouBongue does not have any "potential professional connections" 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, will not own property in the United States, and will not have had time to form many connections—professional or otherwise. 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"). And, in fact, the documents provided by the government show that Mr. BoukouBongue provided the name, address, and phone number of a friend in the United States to immigration officers when he was detained back in January 2025. ECF 17-1 at 3.

Finally, Respondents cite the fact that an immigration judge initially 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. BoukouBongue could

not be found to be a flight risk just because his case has been preliminarily decided by an immigration judge and is on appeal.

II. The appropriate remedy is immediate release.

Regarding release, Respondents continue to assert that Mr. BoukouBongue 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] 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 3. Respondents claim this is the correct remedy because it is what would "remedy the constitutional deficiency." *Id.* But, as asserted in Mr. BoukouBongue's previous filings, the government has violated both procedural and substantive due process by detaining Mr. BoukouBongue for over sixteen 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. BoukouBongue'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 2. Ordering a bond hearing would only act to prolong Mr.

BoukouBongue'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. BoukouBongue's immediate release.

Respectfully submitted,

Dated: June 17, 2026

/s/ Hannah Basalone

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