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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 Dunjie Weng

10 Petitioner,

11 v.

John Rathman, *et al.*,

12 Respondents

CASE NO.:26-cv-1478-RBM-AHG

13 **PETITIONER'S REPLY TO**
14 **RESPONDENTS' RETURN**
15 **AND OPPOSITION TO NON-OPPOSITION**
16 **TO BOND HEARING**
17 **AS INSUFFICIENT RELIEF**

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22 **AND OPPOSITION TO NON-OPPOSITION TO BOND HEARING**
23 **AS INSUFFICIENT RELIEF**

24
25 **I. INTRODUCTION**

26
27 Petitioner Dunjie Weng respectfully submits this Reply to Respondents' Return to Habeas
28 Petition and Notice of Non-Opposition (Dkt. 4). Respondents' one-page filing concedes that
Petitioner is entitled to at least a bond hearing, yet offers nothing more than non-opposition to "a
bond hearing for Petitioner in this matter, subject to supervision during his removal proceedings."

1 Dkt. 4 at 1. While the Government’s concession is notable, it falls far short of the relief Petitioner
 2 seeks and to which he is constitutionally entitled.

3 Petitioner does not seek merely a bond hearing. He seeks immediate release from unlawful
 4 detention, a declaration that his re-arrest on November 1, 2025 was unlawful, and an injunction
 5 prohibiting re-arrest absent a pre-deprivation hearing before a neutral adjudicator at which the
 6 Government bears the burden of proving by clear and convincing evidence that Petitioner is a
 7 danger or flight risk. The Government’s non-opposition to a bond hearing—without more—does not
 8 moot Petitioner’s claims, does not remedy the constitutional violation that has already occurred, and
 9 does not provide the constitutionally adequate process to which Petitioner is entitled.

10 **II. THE GOVERNMENT’S NON-OPPOSITION TO A BOND HEARING**

11 **DOES NOT MOOT PETITIONER’S CLAIMS**

12 As an initial matter, the Government’s offer of non-opposition to a bond hearing does not
 13 render this habeas petition moot. A case becomes moot only when “it is impossible for a court to
 14 grant any effectual relief whatever to the prevailing party.” *Knox v. Service Employees International*
 15 *Union, Local 1000*, 567 U.S. 298, 307 (2012) (internal quotation marks omitted). Here, Petitioner
 16 seeks relief well beyond a bond hearing, including: (1) immediate release; (2) a declaration that his
 17 re-arrest was unlawful; and (3) an injunction prohibiting future re-arrest without pre-deprivation
 18 process. The Government’s bare non-opposition to one component of Petitioner’s requested relief
 19 does not extinguish the remaining live claims.

20 Moreover, even with respect to the bond hearing itself, the Government’s non-opposition is
 21 not a binding commitment that provides Petitioner with any guarantee of relief. The Government
 22 does not concede that Petitioner is entitled to release, does not agree to bear the burden of proof at
 23 any hearing, and does not agree that clear and convincing evidence is the applicable standard. A
 24 non-opposition filing can be withdrawn or modified at any time, leaving Petitioner with no
 25 enforceable right. See *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (voluntary cessation of
 26 challenged conduct does not moot a case unless “it is absolutely clear the allegedly wrongful
 27 behavior could not reasonably be expected to recur”).

28 **III. A BOND HEARING BEFORE AN IMMIGRATION JUDGE**

IS CONSTITUTIONALLY INSUFFICIENT RELIEF

1 **A. The Current Immigration Court Framework Renders Bond Hearings Illusory**

2
3 The Government's offer of a bond hearing rings hollow in light of the current state of
4 immigration adjudication. Under the BIA's recent decisions in *Matter of Q. Li*, 29 I&N Dec. 66
5 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), Immigration Judges have
6 been stripped of authority to conduct bond hearings for noncitizens who entered without admission
7 or inspection and are classified under 8 U.S.C. § 1225(b). These BIA decisions have been applied to
8 systematically deny bond hearings to individuals in Petitioner's position across the country.

9 Petitioner raised this precise concern in his Petition. See Dkt. 1 at ¶¶ 12, 23. A bond hearing
10 that is preordained to result in denial is not a meaningful hearing—it is an empty procedural exercise.
11 As practitioners across the nation have reported, bond hearings for individuals classified under §
12 1225(b) are being summarily denied under the *Q. Li* and *Yajure Hurtado* framework. See Dkt. 1 at ¶
13 23 (citing *Lazaro Maldonado Bautista v. Ernesto Santacruz, Jr.*, 5:25-cv-01873 (C.D. Cal.)).
14 Offering Petitioner a hearing that Immigration Judges lack authority to adjudicate meaningfully is
15 not constitutionally adequate process.

16 Due process requires not merely a hearing in form, but a hearing that provides a “meaningful
17 opportunity to be heard.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). A bond hearing before an
18 Immigration Judge operating under the constraints of *Q. Li* and *Yajure Hurtado* cannot provide that
19 opportunity. See *Diouf v. Napolitano* (“Diouf II”), 634 F.3d 1081, 1091-92 (9th Cir. 2011)
20 (requiring that custody determinations be made by a neutral decisionmaker, not ICE alone).

21 **B. The Government's Offer Does Not Specify Constitutionally Required Procedural 22 Protections**

23 The Government's non-opposition to a bond hearing is conspicuously silent on the critical
24 procedural protections that due process requires. Specifically, the Government does not agree that:

- 25 • The Government bears the burden of proof, rather than the detainee;
- 26 • The applicable standard is clear and convincing evidence;
- 27 • The hearing must be conducted before a neutral adjudicator with actual authority to order release;
- 28 • The adjudicator must consider alternatives to detention; or
- The Government must demonstrate changed circumstances since its January 2024 release determination.

Without these protections, a bond hearing is constitutionally deficient. The Ninth Circuit and numerous district courts within this Circuit have held that when the government seeks to deprive a previously released noncitizen of liberty, the government—not the detainee—must bear the burden of justifying continued detention by clear and convincing evidence. See *Hernandez v. Sessions*, 872 F.3d 976, 990-91 (9th Cir. 2017); *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011). A generic “bond hearing” without these safeguards does not cure the constitutional violation.

IV. PETITIONER IS ENTITLED TO IMMEDIATE RELEASE BECAUSE HIS RE-DETENTION WAS UNLAWFUL

A. The Re-Arrest Violated Due Process Because There Were No Changed Circumstances and No Pre-Deprivation Hearing

The proper remedy for Petitioner’s unlawful detention is not a post-hoc bond hearing but immediate release. Petitioner’s re-arrest on November 1, 2025 was itself unlawful because it occurred without any pre-deprivation hearing and without any showing of changed circumstances—in direct violation of the Due Process Clause and established BIA and ICE policy.

Under *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981), ICE may not revoke a prior release determination absent changed circumstances. The Ninth Circuit has endorsed this principle. *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021) (“absent changed circumstances ... ICE cannot redetain [the petitioner]”). ICE’s own practice further limits re-arrest to situations involving a “material change in circumstances.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), aff’d sub nom. *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

Here, the Government has identified no changed circumstances whatsoever. Between Petitioner’s release in January 2024 and his re-arrest in November 2025:

- Petitioner complied with all conditions of his release;
- Petitioner attended all scheduled hearings and ICE check-ins;
- Petitioner maintained lawful employment with work authorization;
- Petitioner was never arrested or charged with any crime;
- Petitioner retained counsel and actively pursued his asylum case; and
- Petitioner posed no danger to the community and no risk of flight.

The only thing that changed was the administration’s policy to dramatically increase immigration arrests. A shift in enforcement policy is not a “changed circumstance” pertaining to this

individual Petitioner. It is precisely the kind of arbitrary, mass re-detention that due process was designed to prevent. See *Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest).

B. Federal Courts Have Consistently Ordered Release—Not Merely Bond Hearings—in These Circumstances

Multiple federal district courts in this Circuit have addressed identical factual scenarios—noncitizens previously released under supervision, re-arrested without changed circumstances or pre-deprivation hearings under the current enforcement campaign—and have ordered immediate release, not merely bond hearings. See, e.g.:

- *Calderon v. Kaiser*, No. 25-CV-06695-AMO, 2025 WL 2430609, at *3 (N.D. Cal. Aug. 22, 2025) (applying Mathews factors and finding due process rights for noncitizens granted liberty of release);
- *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *5 (N.D. Cal. Aug. 21, 2025) (same);
- *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025) (same);
- *Hernandez Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110, at *4 (N.D. Cal. Sept. 3, 2025) (same);
- *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction preventing re-arrest when petitioner had been on bond for more than five years);
- *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (requiring notice and hearing before re-detention).

These courts recognized that when the Government re-detains a noncitizen in violation of due process, the remedy is to restore the status quo ante—release under the conditions that existed prior to the unlawful re-arrest—not to remand to the same administrative system that failed to provide constitutionally adequate process in the first instance.

V. THE MATHEWS BALANCING TEST REQUIRES RELEASE, NOT A BOND HEARING

1 Application of the three-part *Mathews v. Eldridge* balancing test, 424 U.S. 319, 335 (1976),
 2 confirms that Petitioner is entitled to release—not merely referral to a bond hearing of uncertain
 3 constitutional adequacy.

4 5 **A. Petitioner's Private Interest Is Profound**

6 Petitioner's interest in his physical liberty is among the most fundamental interests
 7 recognized by our legal system. "Freedom from imprisonment—from government custody,
 8 detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process]
 9 Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner lived at liberty for nearly
 10 two years, complying with all conditions of release, maintaining employment, and pursuing his
 11 asylum case. His liberty interest is at least as strong as that of a criminal parolee—and courts have
 12 held that even parolees cannot be re-incarcerated without pre-deprivation process. See *Morrissey v.*
 13 *Brewer*, 408 U.S. 471, 482 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973).

14 **B. The Risk of Erroneous Deprivation Is High Without Judicial Intervention**

15 The risk of erroneous deprivation of Petitioner's liberty is substantial. ICE re-arrested
 16 Petitioner unilaterally, without any hearing, without any finding of changed circumstances, and
 17 without any individualized determination that he poses a danger or flight risk. The Government's
 18 non-opposition to a bond hearing implicitly acknowledges that this unilateral deprivation was
 19 procedurally deficient. But a bond hearing before an Immigration Judge—who may lack authority to
 20 grant bond under *Q. Li and Yajure Hurtado*—does not meaningfully reduce the risk of continued
 21 erroneous deprivation. Only this Court's direct intervention can provide the constitutionally
 22 adequate safeguard that Petitioner requires.

23 **C. The Government's Interest in Continued Detention Is Negligible**

24
 25 The Government's interest in continuing to detain Petitioner is minimal. Immigration
 26 detention serves only two constitutionally permissible purposes: preventing danger to the
 27 community and ensuring appearance at immigration proceedings. *Zadvydas*, 533 U.S. at 690. ICE
 28 itself determined in January 2024 that Petitioner met neither criterion and released him. Nothing has
 changed since that determination. Petitioner attended every hearing and every ICE check-in. He was
 never arrested. He maintained stable employment and community ties.

1 The Government has not identified—in its Return or at any point—a single factual basis for
 2 concluding that Petitioner is now a danger or flight risk. The Government’s one-page Return is
 3 entirely silent on the merits, offering no justification whatsoever for Petitioner’s continued detention.
 4 This silence speaks volumes. The Government cannot meet its burden because there is no legitimate
 5 basis for Petitioner’s re-detention.

6 Moreover, releasing Petitioner would reduce—not increase—the Government’s fiscal burden.
 7 The Ninth Circuit has recognized the “staggering” costs of immigration detention: “\$158 each day
 8 per detainee.” *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017). Petitioner has been
 9 detained for over four months at taxpayer expense without any constitutionally valid basis.

10 VI. THE GOVERNMENT’S SILENCE ON THE MERITS 11 CONSTITUTES A CONCESSION

12 Respondents’ Return is remarkable for what it does not say. The Government does not
 13 contest that Petitioner was re-arrested without a pre-deprivation hearing. The Government does not
 14 contest that there were no changed circumstances justifying re-detention. The Government does not
 15 argue that Petitioner is a danger or flight risk. The Government does not argue that *Matter of*
 16 *Sugay*’s changed-circumstances requirement is inapplicable. The Government does not challenge
 17 the legal framework set forth in Petitioner’s Petition, including the extensive *Mathews* analysis, the
 18 *Morrissey* due process framework, or the line of federal district court decisions ordering release in
 19 identical circumstances.

20 By failing to respond to any of Petitioner’s legal arguments, the Government has effectively
 21 conceded them. See *Walsh v. Nevada Dep’t of Human Res.*, 471 F.3d 1033, 1037 (9th Cir. 2006)
 22 (failure to oppose an argument constitutes a concession of the issue); *Stichting Pensioenfonds ABP v.*
 23 *Countrywide Fin. Corp.*, 802 F. Supp. 2d 1125, 1132 (C.D. Cal. 2011) (same). The Government’s
 24 decision to file a bare non-opposition to a bond hearing—rather than substantively defending
 25 Petitioner’s detention—confirms that continued detention cannot be justified on the merits.

26 VII. CONCLUSION

27 The Government’s non-opposition to a bond hearing is an insufficient response to
 28 Petitioner’s habeas petition. Petitioner was unlawfully re-arrested without changed circumstances
 and without a pre-deprivation hearing, in violation of the Due Process Clause. A bond hearing
 before an Immigration Judge—who may lack authority to grant bond under current BIA

precedent—does not remedy this constitutional violation. The proper remedy is immediate release, restoration of the status quo ante, and an injunction prohibiting re-arrest absent constitutionally adequate pre-deprivation process.

Petitioner respectfully requests that this Court:

(1) Grant the Petition for Writ of Habeas Corpus;

(2) Declare that Petitioner's re-arrest on November 1, 2025 was unlawful for lack of changed circumstances and pre-deprivation process;

(3) Order Petitioner's immediate release under reasonable conditions of supervision;

(4) Enjoin Respondents from re-arresting Petitioner unless and until a hearing is held before a neutral adjudicator at which the Government demonstrates, by clear and convincing evidence, that changed circumstances exist such that Petitioner is a danger to the community or a flight risk, taking into account alternatives to detention;

(5) Award reasonable costs and attorney's fees; and

(6) Grant any other relief the Court deems just and proper.

Respectfully submitted this 19th day of March, 2026.

By counsel,

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