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

13 WENBIAO LI,

14
15 Petitioner,

16 v.

17 TODD BLANCHE, in his official capacity as
18 Acting Attorney General of the United States;
19 MARKWAYNE MULLIN, in his official
20 capacity as Secretary of Homeland Security;
21 TODD M. LYONS, in his official capacity as
22 Acting Director of U.S. Immigration and
23 Customs Enforcement (ICE); GREGORY
24 ARCHAMBEAULT, in his official capacity as
25 Field Office Director, San Diego Field Office,
26 U.S. Immigration and Customs Enforcement
27 and JEREMY CASEY, in his official capacity
28 as Warden Of The Imperial Regional
Detention Facility,

Respondents.

Case No.: 3:26-cv-02859-TWR-JLB

**PETITIONER'S REPLY TO
RESPONDENTS' RETURN TO HABEAS
PETITION**

IMMIGRATION HABEAS CASE

1 Petitioner Wenbiao Li, by and through undersigned counsel, respectfully submits this Reply
2 to Respondents' Return to the Second Emergency Petition for Writ of Habeas Corpus.

3 **I. INTRODUCTION**

4 Respondents concede that this Court ordered an individualized bond hearing under 8 U.S.C.
5 § 1226(a) on April 1, 2026, and that Petitioner received such a hearing on April 8, 2026. (Return at
6 1–2.) What they ignore is that the Immigration Judge **directly violated** this Court's Order by placing
7 the burden of proof on Petitioner rather than on the government.

8 Petitioner has now exhausted administrative remedies by filing a timely BIA appeal.
9 Continued detention after a defective hearing ordered by this Court violates both the April 1, 2026
10 Order and the Fifth Amendment's Due Process Clause. Applying the three-factor balancing test of
11 *Mathews v. Eldridge*, 424 U.S. 319 (1976), immediate release is now the only constitutionally
12 adequate remedy.

13 **II. REPLY TO RESPONDENTS' ARGUMENTS**

14 **A. The April 8, 2026 Hearing Violated This Court's April 1, 2026 Order**

15 Respondents claim this Court's April 1 Order was "silent" on the burden of proof. (Return
16 at 2.) This is incorrect. The Order was issued "in accordance with this Court's prior Orders" in
17 substantially identical cases. (Case No. 3:26-cv-01933-TWR-JLB, ECF No. 4.) Those prior orders
18 uniformly require that the government bear the burden of proving, by clear and convincing evidence,
19 that the petitioner is a danger or flight risk. See *Tao Zhang v. Blanche*, No. 3:26-cv-01986-RBM-
20 BJW, ECF No. 6 at 4 (S.D. Cal. Apr. 8, 2026) ("Respondents shall bear the burden of establishing,
21 by clear and convincing evidence..."); *Sadeqi v. LaRose*, 809 F. Supp. 3d 1090, 1095 (S.D. Cal.
22 2025).

23 The Immigration Judge expressly reversed the burden: "it's the Respondent's burden to
24 prove that they are not a risk of flight or danger to the community." (Bond Hearing Transcript,
25 Exhibit A to Petition, at 3.) This was not a discretionary choice — it was a direct violation of this
26 Court's directive.

27 **B. Administrative Remedies Have Now Been Exhausted**

28

1 Respondents argue that Petitioner’s BIA appeal, filed the day before this Petition, is too
2 recent to constitute meaningful exhaustion. (Return at 2–3.) This argument fails for two reasons.
3 First, Petitioner has in fact exhausted by filing a timely Notice of Appeal (Form EOIR-26) with the
4 BIA. (Exhibit B to Petition.) Second, even if further exhaustion were required, it should be excused.
5 Exhaustion is a prudential, not jurisdictional, requirement in § 2241 cases. *Hernandez v. Sessions*,
6 872 F.3d 976, 988 (9th Cir. 2017); *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). The
7 Ninth Circuit excuses exhaustion where delay would cause irreparable injury or where the
8 administrative process is inadequate. *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).

9 Petitioner has already been detained for over six weeks following a hearing that this Court
10 specifically ordered. Further delay pending BIA review would cause irreparable harm and prolong
11 the very violation of this Court’s April 1 Order that Petitioner seeks to remedy.

12 **C. This Court Has Jurisdiction**

13 Respondents’ jurisdictional arguments under 8 U.S.C. §§ 1252(g) and 1252(b)(9) are
14 misplaced. This Petition does not challenge the commencement of removal proceedings or the
15 execution of a removal order. It challenges the legality of Petitioner’s continued detention in
16 violation of this Court’s own April 1, 2026 Order and the Due Process Clause. Core habeas claims
17 regarding the lawfulness of detention remain within this Court’s jurisdiction. See *Zadvydas v. Davis*,
18 533 U.S. 678 (2001); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075–76 (9th Cir. 2006).

19 **III. ARGUMENT FOR IMMEDIATE RELEASE UNDER MATHEWS v. ELDRIDGE**

20 Even if the Court declines immediate release, the prolonged detention following a defective
21 hearing now requires relief under the three-factor balancing test of *Mathews v. Eldridge*, 424 U.S.
22 319 (1976):

23 **Private Interest:** Petitioner’s interest in freedom from prolonged civil detention is
24 extraordinarily strong. He has been detained since March 26, 2026 — over six weeks — solely for
25 civil immigration purposes. He has no criminal record and strong community ties. *Zadvydas v.*
26 *Davis*, 533 U.S. 678, 690 (2001) (“Freedom from imprisonment ... lies at the heart of the liberty
27 that the Due Process Clause protects.”).

28

1 **Risk of Erroneous Deprivation:** The risk is high. The Immigration Judge used the wrong
2 burden of proof in direct violation of this Court’s Order. A third hearing would add negligible value;
3 the government has already had its opportunity and failed to meet the correct standard. Additional
4 process would merely prolong the error.

5 **Government Interest:** The government’s interest is minimal. It has already received the
6 exact procedural safeguards this Court ordered. Continued detention imposes no meaningful
7 administrative burden beyond what the government has already litigated twice. Release on
8 conditions (bond, reporting, electronic monitoring) fully serves the government’s interests while
9 protecting Petitioner’s liberty.

10 Balancing these factors, the scales now tip decisively in favor of immediate release. See also
11 *Demore v. Kim*, 538 U.S. 510, 529–531 (2003) (detention must be brief); *Jennings v. Rodriguez*,
12 583 U.S. 281 (2018) (prolonged detention raises serious constitutional concerns).

13 **IV. CONCLUSION AND PRAYER FOR RELIEF**

14 For the foregoing reasons, Petitioner respectfully requests that the Court:

- 15 1) Grant the Second Emergency Petition for Writ of Habeas Corpus;
16 2) Order Respondents to immediately release Petitioner from custody; or, in the alternative,
17 Order a new de novo individualized bond hearing under 8 U.S.C. § 1226(a) within 72 hours, with
18 Respondents bearing the burden by clear and convincing evidence and no weight given to the April
19 8, 2026 transcript or testimony; and
20 3) Grant such other relief as the Court deems just and proper.

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22 Dated: May 15, 2026

Respectfully Submitted,

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