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IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

WEI QIU, Petitioner, vs. CHRISTOPHER J. LaROSE, *et al.*, Respondents.	Case No.: 3:26-cv-1033-JES-MSB **PETITIONER'S OPPOSITION TO RESPONDENTS' RETURN TO PETITION FOR WRIT OF HABEAS CORPUS**

DATED: [February 23, 2026]

/S/ Curtis Lee Morrison
CURTIS LEE MORRISON
Counsel for Petitioner

Petitioner respectfully submits this Reply in support of his Petition for a Writ of Habeas Corpus, and in response to Respondents' Return.

PRELIMINARY STATEMENT

Respondents expressly acknowledged that Petitioner is detained pursuant to 8 U.S.C. § 1226(a) and "is entitled to an order from this Court directing a bond hearing be held pursuant to 8 U.S.C. § 1226(a)." *See* Respondent's Return. This concession resolves the central statutory question presented in the Petition: whether Petitioner is lawfully subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Respondents no longer defend that position. The issue now before this Court is whether Petitioner should be released or, at minimum, afforded a constitutionally compliant bond hearing.

ARGUMENT

I. Petitioner's Continued Detention without Constitutionally Adequate Process Is Unlawful

With the Government's mandatory-detention theory abandoned, Petitioner's continued confinement must be evaluated under 8 U.S.C. § 1226(a) and the Fifth Amendment. Respondents' Return does not address or dispute Petitioner's constitutional claim. Respondents do not engage with the *Mathews v. Eldridge* balancing analysis, do not defend detention without an individualized custody determination, and do not argue that placing the burden on the detainee would satisfy due process. Freedom from physical restraint lies at the core of liberty protected by the Due Process Clause. See *Zadvydas v. Davis*, 533 U.S. 679 (2001). Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), courts balance the private interest at stake, the risk of erroneous deprivation under existing procedures, and the Government's interest. Here, the private interest—freedom from incarceration—is fundamental. The risk of erroneous deprivation is substantial where detention continues without a meaningful opportunity to contest custody

before a neutral adjudicator applying constitutionally adequate standards. Respondents do not argue otherwise.

Because Respondents have not defended the constitutional sufficiency of Petitioner's detention, and because detention without adequate procedural safeguards violates due process, habeas relief is warranted.

II. Immediate Release Is An Appropriate Remedy

Habeas corpus exists to provide a "swift and imperative remedy" for unlawful custody. See *Fay v. Noia*, 372 U.S. 391, 400 (1963). Section 2243 directs courts to resolve such matters "forthwith." Thus, where detention lacks a valid legal foundation, release is an appropriate remedy. Because Petitioner's detention was predicated on an erroneous statutory interpretation that Respondents no longer defend, this Court should declare the detention unlawful and order his immediate release.

Here, Petitioner was arrested in the interior of the United States while engaged in lawful employment and not pursuant to any criminal conviction triggering mandatory detention under § 1226(c). The sole basis for denying him a bond hearing was the now-abandoned theory that he was subject to mandatory detention under § 1225(b)(2)(A). With that theory withdrawn, no statutory basis exists to continue his detention without immediate release.

III. In the Alternative, A Bond Hearing Must Comport With Due Process

If the Court determines that a bond hearing, rather than immediate release, is the appropriate remedy, that hearing must satisfy constitutional requirements. Given the ongoing deprivation of liberty a bond hearing should occur promptly. Further, Respondents do not argue that the burden of proof rests with Petitioner. Nor do they defend the constitutionality of requiring a detainee to prove his own entitlement to liberty. Courts applying § 1226(a) have

likewise held that the Government must bear the burden of proving dangerousness or flight risk. See *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020).

Under the *Mathews* framework, placing the burden on the Government reduces the risk of erroneous deprivation and appropriately allocates responsibility where the State seeks to restrain liberty. Because Respondents do not defend any contrary allocation, the Court should order that any bond hearing require the Government to prove, by clear and convincing evidence, that continued detention is justified.

IV. Respondents' Reservation of Rights Does Not Justify Continued Detention

Respondents state that they reserve the right to supplement their response in the event of appellate developments or policy changes arising from *Maldonado Bautista v. Santacruz*. *See* Respondents' Return. In effect, Respondents suggest that should the outcome in *Bautista* change, the legal posture of this case might likewise shift. That reservation does not provide present statutory authority for continued detention. Speculative future developments cannot justify ongoing confinement today. At present, Respondents concede that Petitioner is detained under 8 U.S.C. § 1226(a). This Court must assess the legality of detention under that conceded framework. The possibility of future appellate relief in another case does not authorize continued detention absent lawful authority now.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the Petition for Writ of Habeas Corpus, declare his detention unlawful, and order his immediate release. In the alternative, Petitioner requests that the Court order a bond hearing at which the

Government bears the burden of proving by clear and convincing evidence that continued detention is justified.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Order Petitioner's immediate release from custody;

b. In the alternative, should the Court decline to order Petitioner's immediate release, Petitioner respectfully requests that the Court order a prompt individualized bond hearing at which the Government bears the burden of justifying continued detention by clear and convincing evidence, and must demonstrate that Petitioner poses a risk of flight or a danger to the community; and

c. Order that, upon release, Respondents shall not impose any electronic monitoring, location-tracking device, GPS ankle bracelet, or any other form of surveillance-based conditions on Petitioner

Respectfully submitted,

Dated: February 23, 2026

/s/ Curtis Lee Morrison
CURTIS LEE MORRISON
Counsel for Petitioner

CERTIFICATE OF COMPLIANCE

Undersigned counsel hereby certifies that the foregoing Petitioner's Opposition to Respondents' Return to Petition for Writ of Habeas Corpus complies with the page limitations set forth in the Civil Local Rules of the United States District Court for the Southern District of California and Honorable James E. Simmons Jr., Civil Chambers Rules. This Reply contains five (5) pages, excluding the caption page, signature block, and certificates, and does not exceed the permitted length for a reply brief absent leave of court.

Dated: February 23, 2026

/s/ Curtis Lee Morrison
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