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ATTORNEY FOR PETITIONER LI KUN

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LI KUN

Petitioner,

v.

WARDEN, OTAY MESA DETENTION CENTER;

FIELD OFFICE DIRECTOR, ICE ERO LOS ANGELES;

SECRETARY OF HOMELAND SECURITY;

ATTORNEY GENERAL OF THE UNITED STATES,

Respondents.

D.C. No. '26CV4669 JAO AHG

A# [redacted]

PETITION FOR WRIT OF HABEAS CORPUS; DECLARATION OF PETITIONER

(28 U.S.C. § 2241)

Petitioner **Kun Li** petitions for a writ of habeas corpus under 28 U.S.C. § 2241. Mr. Li is in civil immigration detention under 8 U.S.C. § 1226(a). As of August 16, 2026, he has been detained for nearly eight months. His administrative appeal from the Immigration Judge's bond denial has remained pending since February 1, 2026, without a decision. A separate appeal from the removal order, received by the Board of Immigration Appeals ("BIA") on June 15, 2026, also remains pending.

This Petition does not ask the Court to review the removal order, reweigh the evidence presented at the January 23, 2026 bond hearing, or sit as an appellate tribunal over the Immigration Judge's discretionary bond determination. It presents a distinct, as-applied Fifth Amendment challenge to the constitutionality of Mr. Li's continued detention under materially changed circumstances arising after this Court resolved his two earlier petitions.

Those circumstances include: several additional months of civil confinement; a bond appeal that has now remained unresolved for more than six months; a separate pending merits appeal; the absence of any identified adjudication date; an off-site ear, nose, and throat ("ENT") referral that has not yet resulted in the specialized evaluation Mr. Li states he needs; his reported worsening difficulty speaking; and severe claustrophobic symptoms described in his sworn declaration.

Mr. Li and counsel have diligently pursued available administrative procedures and have not sought or caused delay.

Mr. Li therefore requests a prompt constitutionally adequate custody hearing at which Respondents bear the burden of justifying continued detention by clear and convincing evidence. If such a hearing is not provided promptly, or if Respondents cannot meet that burden, Mr. Li requests release under reasonable conditions tailored to assure appearance and protect the public.

I.- PARTIES, JURISDICTION, AND VENUE

1. Petitioner **Kun Li,** [redacted], is a citizen and national of China currently detained at the Otay Mesa Detention Center in San Diego County, California.
2. Respondent **Warden, Otay Mesa Detention Center** is Mr. Li's immediate physical custodian and is named solely in an official capacity.
3. Respondent **Field Office Director, Enforcement and Removal Operations, San Diego Field Office, U.S. Immigration and Customs Enforcement** exercises legal authority over Mr. Li's immigration custody and is named solely in an official capacity.
4. Respondent **Secretary, United States Department of Homeland Security** oversees the federal department responsible for ICE and Mr. Li's continuing immigration detention and is named solely in an official capacity.

5. Respondent **Attorney General of the United States** is named solely in an official capacity.

6. This Court has jurisdiction under 28 U.S.C. § 2241 because Mr. Li is in custody within this District and alleges that his continued detention violates the Fifth Amendment. Section 1226(e) does not eliminate habeas jurisdiction over constitutional claims or questions of law concerning the legal framework and procedures governing detention. Singh v. Holder, 638 F.3d 1196, 1200–02 (9th Cir. 2011).

7. This Petition challenges detention only. It does not seek review of the Immigration Judge's removal order, the merits of Mr. Li's applications for immigration relief, or any issue committed exclusively to the court of appeals under 8 U.S.C. § 1252.

8. Venue is proper in this District because Mr. Li is confined here, his immediate custodian is located here, and the challenged custody is being carried out here.

II.- STATUTORY BASIS OF CUSTODY

9. Mr. Li remains detained under 8 U.S.C. § 1226(a) while administrative review of his removal order is pending and the order is not administratively final.

10. Section 1226(a) authorizes discretionary detention pending a decision whether a noncitizen is to be removed. It does not itself establish an automatic six-

month limit or a statutory right to periodic bond hearings. Jennings v. Rodriguez, 583 U.S. 281, 303–14 (2018).

11. Mr. Li does not ask this Court to impose a categorical six-month rule. He challenges the constitutional reasonableness of continued detention on the combined, case-specific circumstances alleged below.

III.- FACTUAL AND PROCEDURAL BACKGROUND

12. Mr. Li entered the United States on a B-2 visitor visa on February 28, 2020. He later applied for asylum and received employment authorization.

13. On December 23, 2025, Mr. Li mistakenly approached the gate at Camp Pendleton while driving toward Los Angeles. After officers determined that his visitor status had expired, he was transferred to ICE custody, issued a Notice to Appear, and detained at Otay Mesa.

14. Mr. Li has remained continuously detained since December 23, 2025. He is not serving a criminal sentence.

15. On January 23, 2026, an Immigration Judge conducted a custody-redetermination hearing under § 1226(a). The Immigration Judge denied bond based on a finding of dangerousness, relying on a 2022 driving-under-the-influence conviction and alleged aggressive conduct during the Camp Pendleton encounter.

16. Mr. Li appealed the bond denial. The BIA received that appeal on February 1, 2026. **Exhibit A** is the BIA filing receipt. As of the filing of this Petition, the bond appeal has been pending for more than six months without a decision.

17. Mr. Li does not ask this Court to decide that appeal or to reweigh the evidence considered by the Immigration Judge. The unresolved appeal is relevant because it is the administrative process designated to review the custody determination, yet it has not supplied a custody decision during the additional months in which Mr. Li has remained confined.

18. The Immigration Judge later ordered Mr. Li removed. Mr. Li timely appealed. The BIA received the removal appeal on June 15, 2026. **Exhibit B** is the BIA filing receipt. That appeal also remains pending.

19. The duration of the proceedings is not attributable to dilatory conduct by Mr. Li. Mr. Li and counsel have pursued available hearings and appeals, complied with applicable filing requirements, and have not requested continuances or otherwise acted to prolong his confinement.

IV.- MEDICAL AND PERSONAL CIRCUMSTANCES DEVELOPED DURING DETENTION

20. Before detention, a mass, nodule, or polyp had been identified in Mr. Li's throat or vocal-cord area. Mr. Li states that he had an outside follow-up appointment scheduled to determine the diagnosis and treatment plan,

including whether surgery was necessary, but detention prevented him from attending that appointment.

21. Detention medical records identify a history of vocal-cord inflammation, nodule, or polypectomy. At a May 29, 2026 clinic visit, Mr. Li denied active hoarseness or voice fatigue and was assessed as asymptomatic at that time. The provider nevertheless entered an off-site ENT referral and advised continued monitoring. The records reflect that financial authorization information was requested for August 29, 2026. **Exhibit C** contains these records.

22. Mr. Li states in his August 1, 2026 declaration that he has repeatedly requested further examination, has not received the specialized outside examination he believes is necessary, and has experienced increasing difficulty speaking and a weakening voice since the May clinic assessment. **Exhibit D ¶¶ 2–10.**

23. Mr. Li also declares that confinement aggravates severe claustrophobic symptoms, including panic, chest tightness, and difficulty breathing. He states that, during episodes, he has lain near the gap beneath a door or wall because he felt unable to obtain enough air. **Exhibit D ¶¶ 11–15.**

24. Mr. Li recognizes the seriousness of his 2022 DUI. He states that he has abstained from alcohol since adopting his religious faith and agrees to

conditions including alcohol abstinence, no driving, reporting, electronic monitoring, and curfew. **Exhibit D ¶¶ 23–31.**

25. Before detention, Mr. Li states that he provided $500 per month to an elderly friend of his grandfather who lacks stable support. Detention has prevented him from working and continuing that assistance. **Exhibit D ¶¶ 16–22.**

26. Mr. Li has an identified sponsor and proposed residence. He is willing to comply with any reasonable condition necessary to assure his appearance and protect the public, including ICE reporting, location monitoring, home confinement or curfew, alcohol testing and abstinence, a prohibition on driving, and attendance at all immigration proceedings.

V.- PRIOR HABEAS PROCEEDINGS AND MATERIAL CHANGE IN CIRCUMSTANCES

27. In Mr. Li's first habeas action, No. 26-CV-1614-JLS-MMP, this Court denied the petition on April 7, 2026. The Court held that Mr. Li was properly detained under § 1226(a), had received the process then available through a bond hearing, and had a pending BIA bond appeal. The Court also rejected the petition's re-detention, Administrative Procedure Act, and Fourth Amendment theories.

28. The first order did not decide the claim presented here: whether detention that was lawful at its earlier stage has become constitutionally unreasonable as

applied after substantial additional confinement, prolonged nonresolution of the bond appeal, a later removal order and appeal, and post-order medical and psychological developments.

29. In **Li v. Warden**, No. 26-CV-2551-JLS-AHG, this Court dismissed Mr. Li's second petition without prejudice on May 14, 2026 because it presented no new ground for relief and was repetitive of the first petition.

30. This Petition is not repetitive. The following material circumstances arose or matured after the prior adjudications:

a. Mr. Li's detention has increased from approximately three and one-half months at the time of the first order to nearly eight months;

b. the bond appeal, which was pending for approximately two months when the first order issued, has now remained unresolved for more than six months;

c. the Immigration Judge has since entered a removal order, Mr. Li timely appealed it, and that separate appeal remains pending;

d. detention medical records now confirm a vocal-cord history and an off-site ENT referral, while Mr. Li reports subsequent worsening difficulty speaking and continued lack of a specialized outside evaluation;

e. Mr. Li has submitted a sworn declaration describing severe claustrophobic symptoms aggravated by confinement; and

f. the passage of time has demonstrated that the pending administrative process relied on in the first order has not supplied a prompt custody determination.

31. The Court therefore need not reconsider any prior factual finding or legal ruling to adjudicate this Petition. The relevant question is prospective: whether continued detention remains constitutionally reasonable now, and what process is due now, on the present record.

VI.- EXHAUSTION

32. Mr. Li invoked the designated administrative review procedure by timely appealing the bond denial to the BIA. That appeal has remained pending since February 1, 2026.

33. Exhaustion under § 2241 is prudential rather than jurisdictional. Singh, 638 F.3d at 1203 n.3.

34. Requiring Mr. Li to remain detained for an undefined additional period while awaiting the very custody review whose delay contributes to the present constitutional claim would not provide a timely remedy for the ongoing deprivation of liberty.

35. The BIA may decide whether the Immigration Judge properly denied bond on the record then before the agency. This Petition presents a different legal question: whether continued detention under the circumstances that have accumulated since that hearing is constitutionally reasonable and whether

additional process is presently required. That constitutional question is appropriate for habeas review.

36. Any prudential exhaustion requirement should therefore be deemed satisfied or excused because Mr. Li timely invoked administrative review, the agency has had more than six months to act, further delay would cause continuing injury, and the relief sought addresses the constitutional adequacy of present detention rather than correction of a discretionary bond determination.

VII.- GOVERNING LEGAL PRINCIPLES

37. Freedom from physical restraint is a fundamental liberty interest protected by the Fifth Amendment. Civil immigration detention must remain reasonably related to its regulatory purposes and must be accompanied by procedures adequate to test whether continued confinement remains necessary.

38. Section 1226(a) authorizes detention during removal proceedings, but the existence of statutory authority does not eliminate constitutional review of the manner or duration of detention as applied to an individual.

39. In Rodriguez Diaz v. Garland, 53 F.4th 1189 (9th Cir. 2022), the Ninth Circuit rejected a categorical claim that due process automatically requires a second bond hearing after six months for every § 1226(a) detainee who previously received a bond hearing. Rodriguez Diaz requires an individualized analysis and does not create a rule that any detention following one bond hearing is

constitutionally immune from challenge regardless of subsequent duration and circumstances.

40. Prieto-Romero v. Clark, 534 F.3d 1053 (9th Cir. 2008), likewise teaches that the absence of a fixed release date does not alone make detention indefinite where removal remains practically attainable. It also recognizes the distinction between statutory authorization and whether adequate procedures have determined that continued detention is necessary as to the particular person.

41. In Singh v. Holder, 638 F.3d 1196 (9th Cir. 2011), the Ninth Circuit confirmed habeas jurisdiction over constitutional and legal challenges to immigration custody procedures and required the Government to justify continued detention by clear and convincing evidence in the prolonged-detention hearing at issue there.

42. These authorities foreclose a fixed-month rule and caution against judicial reweighing of a discretionary bond decision. They do not foreclose a genuinely as-applied challenge based on the combined effect of substantially prolonged confinement, delayed administrative custody review, diligent pursuit of available remedies, intervening medical and psychological hardship, and the availability of conditions that can address the Government's regulatory interests.

VIII.- CLAIM FOR RELIEF

Continued Detention Under 8 U.S.C. § 1226(a) Violates the Fifth Amendment as Applied

43. Mr. Li incorporates paragraphs 1 through 42.

44. Mr. Li does not allege that six months, seven months, or any other fixed period automatically creates a constitutional violation. He alleges that his continued detention has become unreasonable on the totality of the present circumstances.

45. Mr. Li has been continuously confined since December 23, 2025. He received one bond hearing early in detention, on January 23, 2026. The agency appeal from that decision has remained unresolved since February 1, 2026.

46. The risk of erroneous continued deprivation has increased as the original custody determination has aged while the administrative review designed to examine it has remained pending. The original hearing could not evaluate the duration and circumstances that later developed, including the extended pendency of both BIA proceedings, the off-site ENT referral, Mr. Li's reported worsening speech difficulty, and his severe claustrophobic symptoms.

47. Mr. Li did not cause the delay. He and counsel timely pursued the available procedures and did not seek continuances or engage in dilatory conduct. His

lawful use of administrative review should not be treated as consent to detention for an undefined period without a timely, current assessment of necessity.

48. The Government's interests in assuring appearance and protecting the community are legitimate. But due process requires a reliable and current determination that confinement remains necessary to serve those interests. Conditions short of detention—including reporting, electronic monitoring, curfew or home confinement, alcohol testing and abstinence, no driving, and residence with a sponsor—are available to mitigate the identified concerns.

49. Mr. Li does not ask this Court to decide whether the Immigration Judge correctly weighed his DUI conviction, the Camp Pendleton allegations, or the evidence submitted at the January hearing. He seeks a current constitutional process at which the Government must justify continued confinement on the present record.

50. Under these individualized circumstances, Mr. Li's continued detention is no longer reasonably related to the regulatory purposes of § 1226(a) and violates the Due Process Clause of the Fifth Amendment. Because reasonable conditions of supervision can address the Government's interests in assuring appearance and protecting the public, release under such conditions is the appropriate remedy.

IX.- EXHIBITS

- **Exhibit A:** BIA filing receipt reflecting receipt on February 1, 2026 of Mr. Li's appeal from the Immigration Judge's bond denial.
- **Exhibit B:** BIA filing receipt reflecting receipt on June 15, 2026 of Mr. Li's appeal from the Immigration Judge's removal order.
- **Exhibit C:** Otay Mesa medical records concerning Mr. Li's vocal-cord history, May 29, 2026 clinical assessment, and off-site ENT referral.
- **Exhibit D:** Declaration of Kun Li, executed August 1, 2026, addressing his throat symptoms and efforts to obtain care, claustrophobic symptoms, support of an elderly person, rehabilitation following the DUI, and willingness to comply with release conditions.

X.- REQUESTED RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this Petition;
2. Order Respondents to show cause why the writ should not be granted;
3. Declare that, under the present individualized circumstances, Mr. Li's continued detention violates the Due Process Clause of the Fifth Amendment;
4. Grant the Petition and order Mr. Li released under reasonable conditions of supervision, including any reporting, electronic monitoring, curfew or home-confinement, alcohol-abstinence, alcohol-testing, no-driving, or other

conditions the Court deems necessary to assure his appearance and protect the public;

5. Direct Respondents to permit Mr. Li's prompt release upon approval of the residence and supervision arrangements ordered by the Court; and

6. Grant such other and further relief as the Court deems just and proper.

XI.- PRAYER

For the foregoing reasons, Mr. Li respectfully requests that the Court grant the writ and order his release under reasonable conditions of supervision.

RESPECTFULLY SUBMITTED

Executed on: August 16, 2026, in Pasadena, California

/s/ *Junmei Wu*

JUNMEI WU
Attorney for Petitioner Li Kun

CERTIFICATE OF SERVICE

I hereby certify that I have relied on the CM-ECF to serve the foregoing petition on all parties registered in this case.

Dated: August 16, 2026

/s/ *Junmei Wu*

JUNMEI WU