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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>GANG LI,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 06-70866

Agency No. A075-708-870

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted February 16, 2010\*\*

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

Gang Li, a native and citizen of China, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his application for asylum, withholding of removal,

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

and relief under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review due process claims de novo, *Larita-Martinez v. INS*, 220 F.3d 1092, 1095 (9th Cir. 2000), and we grant the petition for review.

Li contends the agency violated his right to due process by holding removal proceedings in the absence of his retained counsel. At the time of the decisions, the IJ and BIA did not have the benefit of our decision in *Hernandez-Gil v. Gonzales*, 476 F.3d 803, 808-09 (9th Cir. 2007) (concluding that the IJ denied petitioner’s statutory right to counsel where the IJ did not take reasonable steps to ensure the right to counsel was honored, and that the denial of petitioner’s statutory right to counsel prejudiced him). We therefore remand for the agency to consider Li’s claims in light of our intervening case law.

**PETITION FOR REVIEW GRANTED; REMANDED.**