

Alejandro Monsalve
CA SBN 324958
Alex Monsalve Law Firm, PC
240 Woodlawn Ave., Suite 9
Chula Vista, CA 91910
(619) 777-6796
Counsel for Petitioner

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

Khalil SHAHIN

Petitioner

v.

Kristi NOEM, Secretary, U.S. Department of
Homeland Security; et al.,

Case No.:25-cv-2496-AGS-KSC

Judge: Hon. Andrew G. Schopler

**PETITIONER'S TRAVERSE TO
RESPONDENT'S RETURN**

INTRODUCTION

Petitioner Khalil Shahin respectfully submits this Traverse in response to Respondents' Return. Khalil challenges the Department of Homeland Security's continued detention under INA § 235(b) as unlawful and unconstitutional in light of its prolonged duration, the absence of any foreseeable removal, and the pendency of humanitarian relief that makes his deportation legally and practically impossible at this stage.

Khalil was apprehended near Tecate, California in November 2024 and has now been confined at the Otay Mesa Detention Center for nearly ten months. He has no criminal history and has pursued all available immigration remedies in good faith. Since his detention, he has filed both a Special Immigrant Juvenile Status (SIJS) petition and an asylum application, each

1 pending adjudication before U.S. Citizenship and Immigration Services. The California Superior
2 Court has issued SIJ findings and appointed Janet Clare Miller, Esq. as his legal guardian.

3 Respondents contend that his ongoing confinement is “mandatory” under § 235(b)(1)(B)
4 (ii) and beyond this Court’s review. But the Supreme Court has long held that immigration
5 detention must remain “reasonably related to its purpose” and cannot continue once it becomes
6 indefinite or arbitrary. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Court in *Jennings v.*
7 *Rodriguez*, 583 U.S. 281 (2018), confirmed that habeas jurisdiction under 28 U.S.C. § 2241
8 extends to challenges questioning the statutory or constitutional basis of detention. And in
9 *Aleman Gonzalez v. Barr*, 955 F.3d 762 (9th Cir. 2020), the Ninth Circuit reaffirmed that due
10 process forbids prolonged civil confinement absent a determination that continued detention
11 serves a legitimate and attainable immigration purpose.

12 Khalil acknowledges that his initial custody at the border may have been statutorily
13 authorized. What he challenges is DHS’s continued reliance on § 235(b) after its regulatory
14 function expired—that is, after ten months of confinement with no imminent prospect of removal
15 and while humanitarian relief remains pending. At this stage, his detention has shifted from
16 administrative to punitive, violating both the INA’s structure and the Fifth Amendment’s
17 guarantee of due process.

18 **JURISDICTION**

19 This Court has jurisdiction under 28 U.S.C. § 2241 to review the legality of Khalil’s
20 detention. His habeas claim challenges neither the commencement of removal proceedings nor
21 any discretionary act to prosecute or execute removal; rather, it contests the statutory and
22 constitutional authority under which the Department of Homeland Security (DHS) continues to
23 hold him. Such a collateral challenge to the basis of detention—as opposed to the validity of a
24 removal order—falls squarely within this Court’s habeas jurisdiction.

25 Respondents’ reliance on 8 U.S.C. §§ 1252(b)(9) and 1252(g) is misplaced. Those
26 provisions do not divest this Court of habeas jurisdiction over collateral challenges to
27 immigration detention. In *Jennings v. Rodriguez*, 583 U.S. 281, 293–94 (2018), the Supreme
28

1 Court reaffirmed that § 1252(b)(9) “cannot be read to swallow all claims that are in any way
2 connected to deportation proceedings.” Similarly, *Reno v. American–Arab Anti-Discrimination*
3 *Comm.*, 525 U.S. 471, 482 (1999), confined § 1252(g) to three discrete actions—commencing,
4 adjudicating, or executing removal—and made clear that it does not cover collateral challenges
5 to custody.

6 Khalil does not contest DHS’s decision to place him in removal proceedings or to
7 determine removability; he challenges only the statutory basis of his ongoing detention and the
8 constitutional limits on its duration. Those are precisely the types of collateral custody claims
9 federal courts have long reviewed under 28 U.S.C. § 2241. See *Gonzalez v. ICE*, 975 F.3d 788,
10 806–07 (9th Cir. 2020) (holding that § 1252(b)(9) does not bar jurisdiction over statutory and
11 constitutional challenges to detention authority). Accordingly, this Court retains jurisdiction to
12 determine whether Khalil’s confinement complies with law.

13 **A. Section 1252(b)(9) Does Not Bar Review**

14 Respondents’ argument that § 1252(b)(9) strips this Court of jurisdiction misconstrues
15 that provision. The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), held that §
16 1252(b)(9) does not preclude judicial review of “claims that are independent of or collateral to
17 the removal process,” including those that challenge the statutory authority for detention itself.
18 Likewise, the Ninth Circuit has repeatedly recognized that habeas review remains available for
19 challenges to the legal or constitutional basis of custody. See *Hernandez v. Sessions*, 872 F.3d
20 976, 988 (9th Cir. 2017) (distinguishing between removal-related claims and detention
21 challenges).

22 Khalil’s petition fits squarely within that exception. He does not seek review of any order
23 of removal or request this Court to adjudicate his removability. Instead, he challenges DHS’s
24 continued reliance on § 235(b)—a provision intended to govern short-term inspection-related
25 detention—long after that statutory framework ceased to apply. His claim is thus collateral to
26 any removal proceeding and fully cognizable under § 2241.

1 **B. Section 1252(g) Is Inapplicable**

2 Section 1252(g) is likewise no bar. The Supreme Court in *Reno v. American-Arab Anti-*
3 *Discrimination Committee*, 525 U.S. 471 (1999), confined § 1252(g) to three discrete actions: the
4 decision to commence proceedings, adjudicate cases, or execute removal orders. DHS's
5 continued detention of Khalil under § 235(b) does not fall within any of those categories. The
6 provision therefore does not foreclose review of a challenge to the authority and duration of
7 confinement.

8 **C. Habeas Review Remains Constitutionally Required**

9 Even if §§ 1252(b)(9) or (g) were read expansively, such an interpretation would raise
10 serious Suspension Clause concerns. The writ of habeas corpus has long served as the traditional
11 mechanism for testing the lawfulness of executive detention. *Zadvydas v. Davis*, 533 U.S. 678
12 (2001), reaffirmed that principle in the immigration context, holding that prolonged detention
13 without a reasonable prospect of removal is constitutionally impermissible. Denying judicial
14 review here would effectively insulate indefinite confinement from any check by the courts—an
15 outcome the Constitution does not tolerate.

16 Accordingly, this Court retains jurisdiction under 28 U.S.C. § 2241 to review the legality
17 of Khalil's prolonged detention and to order his release or a bond hearing should it find that
18 continued confinement under § 235(b) is unlawful.

19 **EXHAUSTION**

20 Respondents argue that Khalil failed to exhaust administrative remedies by not seeking
21 further review before the Board of Immigration Appeals (BIA). That contention lacks merit.
22 Exhaustion in habeas proceedings under 28 U.S.C. § 2241 is prudential, not jurisdictional, and is
23 excused where pursuit of administrative remedies would be futile or inadequate. *Hernandez v.*
24 *Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (citing *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th
25 Cir. 2004)).

1 **A. Khalil Fully Pursued Available Remedies**

2 Khalil affirmatively sought a bond redetermination hearing before the Otay Mesa
3 Immigration Court on August 4, 2025. The Immigration Judge denied jurisdiction to consider
4 bond, citing *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), and DHS's designation of Khalil's
5 custody under INA § 235(b). The denial rested solely on a legal conclusion of ineligibility, not
6 on any discretionary finding about flight risk or danger. Having been told unequivocally that the
7 court lacked authority to review custody, no further administrative step remained.

8 **B. Further Appeal to the BIA Would Have Been Futile**

9 Even if appeal to the BIA were theoretically available, it would have been futile. The
10 BIA itself issued *Matter of M-S-*, which squarely holds that individuals detained under § 235(b)
11 are ineligible for bond hearings pending the outcome of their proceedings. Immigration Judges
12 are bound by that precedent under 8 C.F.R. § 1003.1(g)(1), and the BIA has not limited or
13 revisited it despite significant criticism and evolving district-court rulings. Thus, any appeal
14 would have been foreclosed by binding precedent and would not have provided an effective
15 remedy.

16 **C. The Futility Exception Applies**

17 Under *Laing* and *Hernandez*, prudential exhaustion is excused when:

- 18 (1) administrative remedies are inadequate or not efficacious;
19 (2) pursuit of administrative remedies would be futile;
20 (3) irreparable injury will result; or
21 (4) the administrative proceedings would be void.

22 Each condition is present here. Khalil remains confined after ten months without any possibility
23 of an individualized bond hearing. Further appeal would serve no purpose other than to prolong
24 unconstitutional detention. The record shows not a failure to exhaust, but the absence of any
25 meaningful administrative remedy capable of addressing his claim.

1 Accordingly, the Court should deem exhaustion waived or excused because (1) Khalil
2 pursued the only remedy available; (2) further review was legally foreclosed by *Matter of M-S*;
3 and (3) ongoing detention without judicial review would cause continuing and irreparable harm.

4 **ARGUMENT**

5 **A. DHS's Continued Detention of Khalil Exceeds Its Statutory Authority Under INA §** 6 **235(b)**

7 Respondents argue that Khalil's confinement remains mandatory under INA § 235(b)(1)
8 (B)(ii) because he was initially treated as an "arriving alien" subject to expedited removal. That
9 contention fails to account for both the limited temporal purpose of § 235(b) and the
10 constitutional constraints that apply when detention ceases to serve its regulatory function.

11 Section 235(b) authorizes detention only for the period necessary to complete inspection
12 and credible-fear processing. It was never designed to permit long-term, open-ended
13 confinement while other forms of relief—such as asylum or Special Immigrant Juvenile Status—
14 remain pending. Once the initial inspection and screening functions have concluded, § 235(b) no
15 longer provides a lawful basis for continuing custody.

16 The Supreme Court has long held that civil immigration detention must remain
17 "reasonably related to its purpose." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Where the
18 government's original justification for custody—here, inspection and swift removal—no longer
19 exists, continued confinement becomes *ultra vires* and inconsistent with the statute's purpose.
20 *Zadvydas* emphasized that indefinite or speculative detention exceeds congressional
21 authorization and raises serious due-process concerns.

22 Khalil has now been detained for nearly ten months. His credible-fear process is
23 complete, his removal proceedings are ongoing, and there is no imminent prospect of removal.
24 DHS's continued reliance on § 235(b) at this stage no longer serves any inspection-related
25 objective; it functions solely as preventive detention. That exceeds the limited detention
26 authority Congress granted in § 235(b).

Respondents emphasize the “shall detain” language in INA § 235(b)(1)(B)(ii), invoking *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), to argue that Khalil’s detention is mandatory because he was found to have a credible fear. Petitioner does not dispute that *M-S-* governs the initial statutory framework for custody following a positive credible-fear determination. But that decision, like § 235(b) itself, contemplates detention only for the limited purpose of expeditious processing and removal, not indefinite confinement once those objectives cannot be achieved. The Supreme Court has repeatedly held that even when Congress uses mandatory language, civil immigration detention must remain “reasonably related to its purpose.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); see also *Jennings v. Rodriguez*, 583 U.S. 281, 303–04 (2018) (plurality). After nearly a year of custody with no realistic prospect of removal and while protection applications remain pending, the statutory purpose underlying § 235(b) detention has been fully exhausted. At that point, the government must either exercise its discretionary parole authority under § 212(d)(5)(A) or provide individualized review to ensure that confinement does not become arbitrary and punitive.

B. The Statutory Scheme Does Not Authorize Prolonged or Indefinite Detention

The government’s position—that § 235(b) authorizes confinement until removal or completion of all immigration proceedings—cannot be squared with either the statute’s text or Supreme Court precedent. Section 235(b) is framed in present-tense operational terms, covering individuals “pending a determination of admissibility” or “pending a decision on removal.” It does not contemplate months-long confinement where inspection has concluded and relief applications remain unresolved.

In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Court declined to read a six-month limitation into the statute but simultaneously reaffirmed that constitutional review remains available to determine whether detention has become unreasonably prolonged. *Jennings* did not authorize indefinite detention under § 235(b); rather, it remanded for courts to consider due-process limits. Likewise, the Ninth Circuit in *Aleman Gonzalez v. Barr*, 955 F.3d 762 (9th Cir.

2020), recognized that due process requires periodic review when detention extends beyond its regulatory justification.

Applying those principles, Khalil's detention—approaching a year without a foreseeable removal date—falls well outside the “reasonably necessary” period contemplated by § 235(b). When confinement no longer facilitates inspection or removal, it ceases to be a regulatory measure and becomes punitive, in violation of both the statute and the Constitution.

C. Continued Detention Violates the Fifth Amendment's Due Process Clause

Even if Khalil's detention were technically authorized by statute at its inception, its prolonged and indefinite nature now violates the Due Process Clause of the Fifth Amendment. Civil immigration detention is constitutionally permissible only when it bears a reasonable relation to its purpose. Once that relationship breaks down—when detention ceases to advance any legitimate governmental objective—it becomes punitive and unconstitutional. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

The government's stated objective in detaining Khalil under § 235(b) was to facilitate prompt inspection and removal. But after ten months of confinement, with no foreseeable removal and multiple forms of humanitarian relief pending, that rationale no longer applies. Khalil's continued detention does not serve the INA's administrative function; it merely imposes punishment for being subject to ongoing proceedings. Due process does not tolerate such open-ended confinement.

The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), reaffirmed that the Constitution constrains civil immigration detention even when Congress authorizes custody by statute. The Court left open the availability of as-applied constitutional challenges like this one, emphasizing that indefinite or arbitrary confinement raises serious due process concerns. The Ninth Circuit has since applied that principle to hold that prolonged civil immigration detention without a bond hearing violates due process. See *Aleman Gonzalez v. Barr*, 955 F.3d 762, 781 (9th Cir. 2020) (recognizing the government must provide ‘an adequate opportunity to contest the necessity of continued detention’). Although the Supreme Court later limited classwide relief

1 in *Garland v. Gonzalez*, 142 S. Ct. 2057 (2022), its holding did not disturb the underlying
2 constitutional principle that prolonged civil detention requires an individualized opportunity to
3 contest necessity.

4 Khalil's circumstances fit squarely within that principle. He has remained in civil
5 confinement for nearly a year, despite (1) having no criminal record, (2) fully cooperating with
6 immigration authorities, and (3) having active SIJS and asylum applications that preclude
7 imminent removal. Prolonged detention under these conditions is no longer a regulatory measure
8—it is punishment without conviction, which the Fifth Amendment forbids.

9 As Zadvydas explained, once removal is not “reasonably foreseeable,” the government's
10 justification for continued confinement evaporates. 533 U.S. at 699. Here, DHS cannot plausibly
11 claim that Khalil's removal is imminent or even likely, given the pendency of humanitarian
12 applications that may confer permanent protection. In the absence of any realistic timeline for
13 removal, due process requires either release or, at minimum, an individualized bond hearing
14 before a neutral adjudicator to assess flight risk and danger.

15 CONCLUSION

16 For all the reasons discussed above, Respondents have failed to justify Khalil's continued
17 detention under INA § 235(b)(1)(B)(ii). The record demonstrates that his confinement has long
18 exceeded the limited statutory and constitutional purposes that detention under § 235(b) was
19 designed to serve.

20 Accordingly, Petitioner respectfully maintains his original request that this Court grant
21 the writ of habeas corpus and order his release, or in the alternative, direct DHS to provide an
22 individualized bond hearing consistent with due process and the standards articulated in *Matter*
23 *of Guerra*, 24 I&N Dec. 37 (BIA 2006).

24 Respectfully submitted,

/s/ Alejandro J. Monsalve, Esq. CA SBN 324958

Alex Monsalve Law Firm, PC

240 Woodlawn Ave, Suite 9

Chula Vista, CA 91910

Phone: (619) 777-6796

Email: info@alexmonsalvelawfirm.com

Counsel for Petitioner

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