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

10 **Khalil SHAHIN**

11 Petitioner

12 v.

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

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

**Judge: Hon. Andrew G. Schopler**

**PETITIONER'S  
SUPPLEMENTAL BRIEFING**

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16 **I. Introduction**

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18 Pursuant to the Court's December 4, 2025 order, Petitioner submits this supplemental  
19 brief addressing solely his substantive due process claim. The Court has directed the parties to  
20 provide further briefing on whether Petitioner's continued detention under INA § 235(b), as  
21 applied in his particular circumstances, remains constitutionally permissible, or whether it raises  
22 a potential substantial due process violation.

23 This submission does not seek reconsideration of any procedural due process theory, does  
24 not request statutory reinterpretation of INA § 235(b), and does not challenge the statutory  
25 framework governing detention of applicants for admission. Rather, even assuming that  
26 Petitioner's detention is authorized by statute, the question presented is whether continued civil  
27 confinement, prolonged well beyond its regulatory purpose and without a reasonably foreseeable

1 prospect of removal, exceeds the substantive limits imposed by the Fifth Amendment’s Due  
2 Process Clause.

3 As the Supreme Court has made clear, civil immigration detention must bear a reasonable  
4 relation to a legitimate governmental objective and may not become arbitrary or punitive in  
5 operation. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Clark v. Martinez*, 543 U.S. 371, 380  
6 (2005). Although Congress possesses broad authority in matters of immigration and admission,  
7 that authority does not permit detention to continue indefinitely or in circumstances where  
8 confinement no longer meaningfully advances its statutory purpose. *Jennings v. Rodriguez*, 583  
9 U.S. 281, 308–09 (2018).

10 Here, Petitioner’s detention has continued far beyond the point at which detention can  
11 meaningfully advance any legitimate regulatory function. Initial inspection and screening have  
12 long since concluded, removal is not reasonably foreseeable due to the pendency of ongoing  
13 proceedings, and continued detention no longer serves a legitimate regulatory function. Under  
14 these circumstances, continued confinement raises serious substantive due process concerns  
15 independent of any procedural entitlement.

16 Accordingly, as directed by the Court, this supplemental brief addresses whether  
17 Petitioner’s continued detention now exceeds the constitutional bounds of permissible civil  
18 confinement.

## 19 **II. Governing Substantive Due Process Principles Limiting**

### 20 **Civil Immigration Detention**

21 The Fifth Amendment’s Due Process Clause imposes substantive limits on the federal  
22 government’s authority to detain. Although immigration detention is civil rather than punitive  
23 and is often authorized by statute, it must remain reasonably related to a legitimate governmental  
24 purpose. When detention becomes excessive in relation to that purpose, or continues after its  
25 regulatory justification has eroded, it violates substantive due process.  
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1 In *Zadvydas v. Davis*, the Supreme Court held that immigration detention is  
2 constitutionally permissible only so long as it bears a reasonable relation to its purpose and does  
3 not become arbitrary or indefinite. 533 U.S. 678, 690 (2001). The Court emphasized that “[a]  
4 statute permitting indefinite detention of an alien would raise a serious constitutional problem,”  
5 because civil confinement lacking a valid regulatory justification crosses the line into  
6 impermissible punishment. *Id.* at 690–91. Although *Zadvydas* arose in the context of post-final-  
7 order detention, its reasoning rested on “the nature of civil confinement itself” and the Due  
8 Process Clause’s prohibition on arbitrary government detention. *Id.* at 690.

9 The Court reaffirmed that principle in *Clark v. Martinez*, holding that constitutional  
10 limitations on civil immigration detention apply regardless of the noncitizen’s specific  
11 immigration posture. 543 U.S. 371, 380 (2005). *Clark* made clear that where detention authority  
12 is exercised without a realistic endpoint and without a continuing regulatory rationale,  
13 constitutional concerns are unavoidable. Together, *Zadvydas* and *Clark* establish that civil  
14 immigration detention must be temporally and substantively tethered to its justification.

15 In *Jennings v. Rodriguez*, the Supreme Court declined to read temporal or procedural  
16 limitations into the immigration detention statutes as a matter of statutory interpretation. 583  
17 U.S. 281, 296–97 (2018). Critically, however, the Court expressly declined to decide whether  
18 prolonged detention under those statutes violates the Constitution, remanding for consideration  
19 of the constitutional question. *Id.* at 308–09. *Jennings* therefore preserved as-applied substantive  
20 due process challenges to immigration detention, even where detention is authorized by statute  
21 and no procedural entitlement is recognized.

22 These decisions reflect a consistent constitutional principle: while Congress has broad  
23 authority to prescribe detention in the immigration context, that authority is not unlimited. Civil  
24 detention must remain regulatory in character and reasonably related to its intended purpose.  
25 Once detention continues beyond the point at which it meaningfully serves that purpose—or  
26 where removal is not reasonably foreseeable—continued confinement becomes arbitrary and  
27

1 constitutionally suspect. Substantive due process prohibits civil detention that operates as  
2 punishment or persists solely by inertia.

3 Accordingly, the relevant inquiry is not whether detention was initially authorized by  
4 statute, but whether continued detention, as applied in the particular circumstances of the case,  
5 remains justified under substantive due process principles.

6 **III. Continued Detention Serves No Operative Function**

7 **Where Removal Is Not Legally Possible**

8 Even where detention is authorized at the outset under INA § 235(b), its continued  
9 constitutionality depends on whether confinement continues to serve a legitimate and achievable  
10 governmental objective. Where detention persists after removal is no longer legally available and  
11 detention cannot advance adjudication, continued confinement loses any operative function.

12 Here, Petitioner cannot be removed unless and until pending immigration proceedings  
13 and humanitarian petitions are resolved. While those matters remain unadjudicated, the  
14 Department of Homeland Security lacks legal authority to execute removal, regardless of the  
15 duration of detention. Continued custody during this period does not bring removal any closer  
16 and does not serve to effectuate enforcement of the immigration laws.

17 Detention under these circumstances also does not facilitate expedited adjudication. The  
18 pace of Petitioner's removal proceedings is dictated by the immigration court's docket and  
19 agency adjudication timelines, not by DHS custody status. Continued detention neither  
20 accelerates decision-making nor advances resolution of Petitioner's claims. Custody operates  
21 independently of—and without influence over—the timing of adjudication.

22 As a result, detention persists solely because proceedings remain pending, not because  
23 confinement is accomplishing any contemporaneous regulatory task. When detention is  
24 maintained in a posture where the government cannot remove the individual and detention does  
25 nothing to advance adjudication, confinement becomes disconnected from its asserted  
26 justification.

1 Once detention no longer serves an operative governmental function, continued  
2 confinement is excessive in relation to any purpose that may have existed at the outset. Civil  
3 detention under such circumstances ceases to operate as a regulatory measure and instead reflects  
4 prolonged restraint without meaningful purpose. Where detention continues despite the legal  
5 impossibility of removal and the absence of any functional utility, continued confinement must  
6 be evaluated under substantive due process principles as constitutionally suspect.

7 **IV. Continued Detention Violates Substantive Due Process**  
8 **as Applied to Petitioner**

9 As applied to Petitioner, continued detention under INA § 235(b) now exceeds the  
10 substantive limits imposed by the Due Process Clause.<sup>1</sup> Even assuming detention was initially  
11 authorized, confinement has become excessively prolonged, removal is not reasonably  
12 foreseeable, and detention no longer serves any operative governmental function. Continued  
13 custody therefore operates in an arbitrary and constitutionally impermissible manner.

14 **A. Petitioner Has Been Detained for Over One Year**

15 Petitioner has been continuously detained since November 20, 2024. His detention has  
16 now exceeded one full year. At this point, confinement can no longer be characterized as  
17 temporary or incidental to initial border processing. Instead, detention has become prolonged and  
18 indefinite in practice, persisting while adjudication proceeds on an open-ended timeline.

19 The length of detention is particularly significant given that Petitioner is not awaiting  
20 imminent removal. Prolonged civil detention of this duration raises serious substantive due  
21 process concerns where, as here, continued confinement does not advance any contemporaneous  
22 governmental objective.

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23 <sup>1</sup> Several courts in this District have recognized that prolonged detention of noncitizens classified as applicants for  
24 admission may raise an as-applied substantive due process concern where detention continues for an  
25 indeterminate period while removal is not reasonably foreseeable, notwithstanding the absence of any procedural  
26 entitlement. See, e.g., *Sadeqi v. LaRose*, No. 25-cv-2084 (S.D. Cal. 2025); *Faizi v. LaRose*, No. 25-cv-2687  
27 (S.D. Cal. 2025).

1 **B. Removal Is Not Reasonably Foreseeable as a Matter of Law**

2 Petitioner cannot be removed unless and until his ongoing proceedings and pending  
3 petitions are resolved. While those matters remain unresolved, DHS lacks authority to execute  
4 removal regardless of how long Petitioner remains detained. Detention during this period does  
5 not facilitate removal and does not shorten the duration of proceedings.

6 Where removal is not merely delayed, but legally unavailable, continued detention cannot  
7 be justified as a measure to effectuate removal. Detention under such circumstances becomes  
8 increasingly detached from its asserted purpose and constitutionally suspect.

9 **C. Continued Detention Serves No Operative Governmental Function**

10 Because removal is not legally possible and adjudication proceeds according to schedules  
11 outside DHS's control, continued detention serves no operative governmental function. Custody  
12 does not expedite proceedings, does not advance adjudication of Petitioner's claims, and does  
13 not facilitate enforcement of any removal order.

14 Instead, detention has become the default posture while Petitioner waits for resolution of  
15 matters that detention cannot influence. When confinement persists solely because proceedings  
16 remain pending—without advancing any achievable objective—detention operates as custodial  
17 inertia rather than as a regulatory measure.

18 **D. DHS's Continued Detention While Failing to Resolve Petitioner's SIJS Petition Renders**  
19 **Detention Arbitrary**

20 The arbitrary nature of Petitioner's continued detention is further underscored by DHS's  
21 handling of his pending humanitarian relief and the existence of a state court protective order. On  
22 April 3, 2025, a California Superior Court issued Special Immigrant Juvenile findings,  
23 determining that reunification with one or both parents was not viable due to abuse, neglect, or  
24 abandonment, and that it was not in Petitioner's best interests to return to his country of  
25 nationality. On April 4, 2025, the state court issued Letters of Guardianship appointing Janet  
26 Clare Miller, Esq., a U.S. citizen attorney, as Petitioner's legal guardian.

1 Petitioner subsequently filed a Form I-360 petition for Special Immigrant Juvenile Status  
2 with USCIS on April 9, 2025. That petition remains unadjudicated. Approval of the petition  
3 could materially alter Petitioner's immigration posture and provide a path toward permanent  
4 adjustment of status. Although Congress has expressed its intent that immigration benefit  
5 applications be adjudicated in a timely manner, generally within 180 days, see 8 U.S.C. §  
6 1571(b), USCIS has now exceeded that benchmark with respect to Petitioner's SIJS petition.

7 During this period of agency inaction, DHS continues to detain Petitioner through ICE  
8 under INA § 235(b). As a result, one component of DHS maintains prolonged custody while  
9 another component has not acted on the humanitarian petition that could resolve Petitioner's  
10 removability and detention. Detention under these circumstances does not facilitate removal,  
11 which cannot occur while Petitioner's SIJS petition remains pending, nor does it advance  
12 adjudication of that petition, which rests entirely within USCIS's control.

13 Continued detention in the face of an unadjudicated SIJS petition and a state court  
14 protective determination undermines the humanitarian framework Congress established to  
15 protect vulnerable juveniles. When federal detention persists notwithstanding a state court's  
16 exercise of child-protection jurisdiction and the government's own delay in adjudicating  
17 humanitarian relief, confinement becomes divorced from any legitimate governmental purpose.

18 Under these circumstances, continued detention is arbitrary and constitutionally excessive  
19 as applied to Petitioner.

20 **E. Detention Has Become Arbitrary and Excessive in Relation to Any Original Justification**

21 Taken together, the extended duration of detention, the legal impossibility of removal, the  
22 absence of any operative governmental function, and DHS's failure to adjudicate Petitioner's  
23 pending SIJS petition compel the conclusion that continued detention is arbitrary and excessive.

24 Whatever justification may have existed at the outset has eroded. As applied to Petitioner,  
25 detention under INA § 235(b) now functions as prolonged civil confinement without a  
26 meaningful purpose. Substantive due process does not permit continued detention under such  
27 circumstances.

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**V. Relief Requested**

Because Petitioner’s continued detention under INA § 235(b), as applied, violates substantive due process, the appropriate remedy is release from ICE custody under reasonable conditions of supervision. Such relief would adequately address any governmental interests while bringing an end to constitutionally excessive confinement.

Petitioner does not seek an order compelling adjudication of any pending immigration benefit and does not request recognition of any procedural entitlement. The relief requested is narrowly tailored to remedy the constitutional violation identified by the Court: continued detention that has become arbitrary and excessive under the Due Process Clause.

**VI. Conclusion**

For the foregoing reasons, Petitioner respectfully requests that the Court order his release from ICE custody under reasonable conditions of supervision in order to remedy the ongoing violation of substantive due process.

Respectfully submitted,

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