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

10 SUHAYB MUHUMED DABLE,

11 Petitioner,

12 v.

13 CHRISTOPHER LAROSE, Warden of the  
14 Otay Mesa Detention Facility, San Diego,  
California, in his official capacity, *et al.*,

15 Respondents.

Case No.: 26-cv-2375-BAS-DDL

**RETURN TO PETITION FOR  
WRIT OF HABEAS CORPUS**

1 **I. INTRODUCTION**

2 The Court should dismiss without prejudice this petition for writ of habeas corpus  
3 under 28 U.S.C. § 2241 for failure to exhaust administrative remedies, and because  
4 exhaustion is not futile. Petitioner challenges the legality of his detention in an adult  
5 detention facility, arguing that he is a minor who should be in custody, if at all, with the  
6 Department of Health and Human Services (DHS). He incorrectly asserts, however, that  
7 the government violated federal law by making an age determination based solely on a  
8 dental x-ray. In fact, the government's age determination was appropriately based on  
9 the totality of circumstances, including Petitioner's own statements about the much  
10 earlier birthdate on his passport. In any event, the parties are actively litigating the issue  
11 of Petitioner's age before the Immigration Judge, who is expected to rule soon on this  
12 issue. Until Petitioner's age has been adjudicated in immigration court, Petitioner's  
13 habeas claim fails for lack of administrative exhaustion. Accordingly, the Court should  
14 deny Petitioner's request for relief.

15 **II. FACTUAL AND PROCEDURAL BACKGROUND**

16 Petitioner, a native and citizen of Ethiopia, entered the U.S. without authorization  
17 on January 5, 2026. In a sworn statement that day, Petitioner admitted he used another  
18 name on his passport: Suhayb Muhumed Abdi. *See* Record of Sworn Statement in  
19 Proceedings, Statement of Suhayb Muhamed Dable, Ex. 1, p.1.<sup>1</sup> And while Petitioner  
20 claimed told federal agents his birthdate was [REDACTED] he admitted his legally  
21 obtained passport reflects a birthdate of [REDACTED] *Id.* Petitioner claimed that  
22 while he traveled with the passport as Suhayb Muhumed Abdi, once in Mexico, he lost  
23 his bag with the passport reflecting he is an adult. *See* Ex. 2, Form I-213, Record of  
24 Deportable Inadmissible Alien, p.3. Given Petitioner's admissions, he was placed in  
25 adult detention.

26  
27  
28 <sup>1</sup> The Exhibits attached hereto are true copies, with appropriate redactions, of official government records supplied by ICE. Given the protected, nonpublic nature of this Return and the relevance of Petitioner's birthdate, information regarding his birthdate has not been redacted.

1 On March 11, 2026, more than two months after he was detained, Plaintiff's  
2 counsel demanded his release, claiming that he is a minor. ERO responded by actively  
3 investigating Petitioner's correct date of birth. While the government does not question  
4 the validity of the birth certificate, it is unclear whether the document actually belongs  
5 to Petitioner, given Petitioner's sworn statement conceding his passport has a different  
6 birthdate and name. Moreover, the certificate has lacks photographs or corroborating  
7 biometric evidence.

8 ERO has sent an email to the Ethiopian embassy requesting additional  
9 government-issued identification documents associated with the birth certificate,  
10 including photos or fingerprints; the agency is awaiting a response. Petitioner,  
11 meanwhile, rendered the investigation more difficult. In addition to admitting use of  
12 contradictory documents and identities, he also failed to timely cooperate with age  
13 determination effort by initially refusing to undergo the dental X-ray examination. *See*  
14 email, ECF 1.2 at 12.

15 Petitioner's next hearing before the Immigration Judge is scheduled for May 28,  
16 2026. Accordingly, in a matter of weeks, the relevant record regarding Petitioner's date  
17 of birth will be presented to and considered by the IJ, who will make a determination  
18 regarding whether a change in his detention is appropriate.

19 **III. ARGUMENT**

20 Petitioner's habeas petition should be denied because he has failed to show a  
21 TVPRA violation. Moreover, he has not exhausted administrative remedies regarding  
22 the agency's age determination. Finally, as an arriving alien seeking asylum protections,  
23 Petitioner is lawfully detained under the Immigration and Nationality Act.

1           **A.     The Agency’s Based its Age Determination on All Available**  
2           **Evidence**

3           The William Wilberforce Trafficking Victims Protection Reauthorization Act of  
4 2008 (TVPRA) requires federal agencies (HHS and DHS) to work together to formulate  
5 a set of policies and procedures for making age determinations. 8 U.S.C. § 1232(b)(4).  
6 The resulting policies and procedures are set forth in the Office of Refugee Resettlement  
7 (ORR) Guide, which, in section 1.6, outlines procedures for “Determining the Age of  
8 an Individual without Lawful Immigration Status.” The ORR Guide expressly  
9 recognizes the difficult nature of making an age determination. These challenges  
10 include, but are not limited to, unavailable documentation and contrary or fraudulent  
11 identity documentation and/or statements. Under the governing procedures, each case  
12 must be evaluated carefully based on the totality of all available evidence. *Imon v.*  
13 *Keeton*, 2020 WL 4284378 (D.Ariz. 2020).

14           When the available evidence fails to indicate a clear answer, ORR case managers  
15 are specifically instructed to consider radiographs. See ORR Guide § 1.6.2 (identifying  
16 “Medical Age Assessments,” including “the use of imaging technology, such as  
17 radiography,” as one of the enumerated categories of evidence that ORR case managers  
18 “should seek ... when conducting age determinations”). The TVPRA also contemplates  
19 their use, on a “non-exclusive” basis, when making an age determination. 8 U.S.C. §  
20 1232(b)(4).

21           Moreover, a “reasonable suspicion” arises that an alien is over 18 years old when  
22 the individual has travelled using a document reflecting a different date of birth. See  
23 *CTM v. Moore*, Case No. 3:20-cv-540-B (BT), 2020 WL 5919737 (ND TX July 1, 2020)  
24 (finding alien’s prior visa application reflecting a birthdate rendering her 26 years of  
25 age provided Respondents reasonable suspicion to believe she was an adult when she  
26 presented herself at the San Ysidro Port of Entry). That reasonable suspicion was  
27 pivotal here, as evidence beyond the birth certificate called Petitioner’s age into  
28

1 question. Specifically, he reportedly admitted to using and then losing an official  
2 passport reflecting a different birthdate and another name. *See* Exs. 1 and 2.  
3 Accordingly, the age determination in the instant case was based not just on the dental  
4 X-ray but on suspicious circumstances warranting further analysis. That investigation  
5 is continuing. Given that the relevant evidence already gathered and the documents  
6 currently being sought by ERO will presumably be included in the Record of Removal  
7 Proceedings, the IJ is best positioned to decide this issue.

8 **B. Petitioner Should be Required to Exhaust the Pending Question**  
9 **Regarding his Age Determination.**

10 The Ninth Circuit “require[s], as a prudential matter, that habeas petitioners  
11 exhaust available judicial and administrative remedies before seeking relief under  
12 § 2241.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other*  
13 *grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). Like jurisdictional  
14 limits and limits on venue, prudential limits are “ordinarily not optional.” *Id.* “When a  
15 petitioner does not exhaust administrative remedies, a district court ordinarily should  
16 either dismiss the petition without prejudice or stay the proceedings until the petitioner  
17 has exhausted remedies, unless exhaustion is excused.” *Leonardo v. Crawford*, 646 F.3d  
18 1157, 1160 (9th Cir. 2011).

19 Here, the agency has not engaged in undue delay. Petitioner’s counsel concedes  
20 she only began seeking her client’s release based a little over a month ago, on March  
21 11, 2026. Declaration of Christina Tong, ¶8, ECF No. 1.2 at 32. Moreover, there is no  
22 need for an urgent determination by this court. While counsel’s declaration claims  
23 Petitioner was sexually harassed, her account consists of nothing but hearsay. The  
24 official Incident Report indicates Petitioner was placed in segregation because he  
25 admitted grabbing another detainee by the neck and pushing him. *See* Ex. 3, February  
26 19, 2026 Incident of Prohibited Acts and Notice of Charges. Given Petitioner’s conduct  
27 and this incomplete record, it would be unwise to engage in a hasty age determination  
28 that could result in moving an aggressive adult to a juvenile detention center.

1 A full factual record will be presented to the IJ, who is expected to make a  
2 decision regarding Petitioner's age at the next master calendar hearing, set for May 28,  
3 2026. There is no indication that requiring exhaustion would be futile. Accordingly,  
4 the Court should dismiss the petition without prejudice. *See Leonardo*, 646 F.3d at 1160  
5 (noting that the burden is on the petition to "demonstrate[] grounds for excusing the  
6 exhaustion requirement" and instructing the district court to dismiss the petition without  
7 prejudice). In the alternative, Respondents request that the Court stay adjudication of  
8 the petition until Petitioner has exhausted his administrative remedies.

9 **C. Petitioner is Lawfully Detained Under the INA and the**  
10 **Constitution.**

11 Setting aside the age question, the law is clear that Petitioner's detention is  
12 statutorily mandated under 8 U.S.C. § 1225(b)(1)(B)(ii), has not been prolonged and is  
13 thus not unconstitutional.

14 Petitioner, an alien who arrived in a manner that subjected him to expedited  
15 removal, was thereafter placed into full removal proceedings. In such cases, the INA  
16 mandates that "the alien *shall be* detained for further consideration of the application  
17 for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added); *see also Matter of M-S*,  
18 27 I.&N. Dec. 509, 519 (A.G. 2019) ("all aliens transferred from expedited to full  
19 [removal] proceedings after establishing a credible fear are ineligible for bond").  
20 Because Petitioner is a noncitizen who was transferred from expedited removal to full  
21 removal proceedings, his detention is mandated by § 1225(b) until the conclusion of  
22 his removal proceedings. *See Jennings*, 583 U.S. at 302 ("§§ 1225(b)(1) and (b)(2)  
23 mandate detention of aliens throughout the completion of applicable proceedings").

24 Petitioner contends that he is entitled to release or a bond hearing conducted by  
25 this Court. But the Supreme Court has rejected such contentions, explaining: "Nothing  
26 in the statutory text imposes any limit on the length of detention. And neither  
27 § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings."  
28 *Jennings*, 583 U.S. at 297. Except for temporary parole granted at the discretion of the

1 Attorney General “for urgent humanitarian reasons or significant public benefit” under  
2 8 U.S.C. § 1182(d)(5), “there are no *other* circumstances under which aliens detained  
3 under § 1225(b) may be released.” *Id.* at 300 (emphasis in original).

4 Because Petitioner’s removal proceedings are pending, and he has not been  
5 granted temporary parole, § 1225(b)(1)(B) mandates his detention until the proceedings  
6 have concluded. *Id.* at 297 (“Once those proceedings end, detention under § 1225(b)  
7 must end as well.”). The Court may not impose temporal limitations on the statute where  
8 none exist. *See id.* at 312 (rejecting the dissent’s drawing of a “6-month limitation out  
9 of thin air”). Petitioner is lawfully detained under § 1225(b)(1)(B), and the statute does  
10 not entitle him to release at this time. As such, his petition must be denied. *See, e.g.,*  
11 *Zelaya-Gonzalez v. Matuszewski*, No. 23-cv-151-JLS-KSC, 2023 WL 3103811, at  
12 \*3 (S.D. Cal. Apr. 25, 2023) (applying *Jennings* to find that the petitioner had no right  
13 to release or a bond hearing).

14 **D. Petitioner Has Not Shown a Due Process Violation**

15 To show that Respondents violated his substantive due process rights, he must  
16 establish that Respondents' conduct "shocks the conscience." *County of Sacramento v.*  
17 *Lewis*, 523 U.S. 833, 846, (1998). This “standard is satisfied where the conduct was  
18 'intended to injure in some way unjustifiable by any government interest,' or in some  
19 circumstances if it resulted from deliberate indifference." *Rosales-Mireles v. United*  
20 *States*, 138 S. Ct. 1897, 1906 (2018). That standard, however, is not met when the  
21 government determines, based on the totality of circumstances, that a detainee who  
22 claims to be a minor should be considered an adult. *See, CTM*, 2020 U.S. Dist. LEXIS  
23 134184, \*28-29.

24 **IV. CONCLUSION**

25  
26 For all the foregoing reasons, Respondents urge the Court to deny the Petition  
27 or, in the alternative, to stay this proceeding pending a decision by the Immigration  
28 Court.

1 DATED: April 21, 2026

Respectfully submitted,

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7 Attorney for Respondents  
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# Exhibit 1