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

11 SUHAYB MUHUMED DABLE,

12 Petitioner,

14 v.

CIVIL CASE NO.:

**PETITIONER'S TRAVERSE TO  
RESPONDENTS' RETURN**

15 CHRISTOPHER J. LAROSE, Senior  
16 Warden, Otay Mesa Detention Center;  
17 PATRICK DIVVER, Field Office  
Director, San Diego Field Office, U.S.  
18 Immigration and Customs Enforcement;  
19 TODD M. LYONS, Acting Director, U.S.  
Immigration and Customs Enforcement;  
20 MARKWAYNE MULLIN, Secretary of  
21 U.S. Department of Homeland Security;  
and TODD BLANCHE, Acting Attorney  
22 General of the United States,

23 Respondents.

24  
25 Petitioner Suhayb Muhumed Dable, by and through his undersigned counsel,  
26 respectfully submits this Traverse to Respondents' Return and Amended Return.  
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## INTRODUCTION

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3 1. The government's Return does not meaningfully engage with the core legal  
4 deficiencies of Suhayb's detention. Rather than demonstrate that it has complied with  
5 the mandatory requirements of the Trafficking Victims Protection Reauthorization  
6 Act ("TVPRA"), 8 U.S.C. § 1232, the government asks this Court to defer to  
7 immigration proceedings, accept unreliable evidence of age at face value, and treat §  
8 1225(b) mandatory detention as foreclosing all constitutional inquiry. None of these  
9 positions are correct.  
10

11  
12 2. First, if Suhayb is a minor—and the evidence strongly supports that he is—the  
13 government had mandatory, time-sensitive statutory obligations to transfer him to the  
14 Office of Refugee Resettlement ("ORR") and provide him with the care and legal  
15 protections that federal law requires for unaccompanied minor children. The  
16 government's failure to do so is independently unlawful, regardless of what the  
17 immigration court eventually concludes.  
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19  
20 3. Second, the government's evidence of Suhayb's age is flawed. The I-213  
21 interview that forms the backbone of the government's age narrative was conducted  
22 entirely in English, without an interpreter, despite the fact that Suhayb's native  
23 language is Somali. Evidence obtained through an interview that the subject could not  
24 understand in his own language should not be given probative weight.  
25

26  
27 4. Third, the passport birthdate on which the government also relies was obtained  
28 under irregular circumstances—by a friend of Suhayb's father rather than by Suhayb

1 or his father—and the same document contains a name that Suhayb does not use  
2 legally. A document obtained through such channels, with apparent errors, cannot  
3 serve as reliable proof of age.  
4

5 5. Fourth, while § 1225(b) authorizes mandatory detention as a statutory matter,  
6 the Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), explicitly declined  
7 to resolve the constitutional question. Due process challenges under the Fifth  
8 Amendment remain available—particularly where, as here, the government is  
9 detaining someone who may be a child in an adult facility without the procedural  
10 protections the law requires.  
11

12 6. Fifth, this Court has independent and unrestricted jurisdiction under 28 U.S.C.  
13 § 2241 to determine whether Suhayb’s detention is lawful. Additionally, any transfer  
14 of custody does not moot the petition, and Suhayb can continue to seek relief against  
15 the successor custodian. The immigration court’s eventual rulings on asylum  
16 eligibility and age will not resolve the separate question before this Court: whether it  
17 is lawful to hold a potential minor in adult immigration detention, in contravention of  
18 the TVPRA and the Fifth Amendment.  
19  
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21

## 22 ARGUMENT

### 23 I. EVEN IF § 1225(b) AUTHORIZES MANDATORY DETENTION AS 24 A STATUTORY MATTER, JENNINGS v. RODRIGUEZ DOES NOT 25 FORECLOSE AS-APPLIED CONSTITUTIONAL CHALLENGES 26 TO SUHAYB’S DETENTION. 27 28

1 7. The government relies heavily on *Jennings v. Rodriguez*, 583 U.S. 281 (2018),  
2 for the proposition that Suhayb is lawfully detained and has no right to a bond  
3 hearing. But this reliance misreads *Jennings*' scope and reach.  
4

5 8. In *Jennings*, the Supreme Court addressed a statutory question: whether 8  
6 U.S.C. §§ 1225(b)(1) and 1225(b)(2) implicitly require periodic bond hearings  
7 through the application of constitutional avoidance doctrine. 583 U.S. at 286–87. The  
8 Court held that they do not. *Id.* at 302. The Court expressly declined, however, to  
9 address the constitutional questions. As Justice Kennedy stated in concurrence, the  
10 constitutional question of “whether those detainees possess due process rights” to  
11 bond hearings “remains open.” *Id.* at 317 (Kennedy, J., concurring). The majority  
12 itself acknowledged that “the parties do not ask us to resolve” the constitutional  
13 question, and the Court “express[ed] no view on the merits of the constitutional  
14 question.” *Id.* at 313.  
15  
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17

18 9. The government reads *Jennings* as foreclosing all challenges to Suhayb's  
19 detention. That is incorrect. *Jennings* holds only that courts may not read an implicit  
20 bond-hearing requirement into § 1225(b) based on constitutional avoidance. It does  
21 not hold that indefinite mandatory detention of a potential minor—without any  
22 procedural safeguard—is constitutionally permissible. That question remains open.  
23  
24

25 10. Suhayb raises an as-applied constitutional challenge under the Fifth  
26 Amendment's Due Process Clause. He does not ask this Court to graft a statutory  
27 bond-hearing requirement onto the INA. Rather, he contends that the Constitution  
28

1 independently prohibits the government from detaining a child in an adult facility  
2 without the procedural protections that the TVPRA and due process require. *Jennings*  
3 does not address, much less foreclose, that claim.  
4

5 11. The Ninth Circuit has consistently recognized that constitutional challenges  
6 remain available under § 2241 notwithstanding *Jennings*. See, e.g., *Hernandez v.*  
7 *Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017) (recognizing due process rights of  
8 immigration detainees). The government’s attempt to use *Jennings* as a constitutional  
9 shield must be rejected.  
10

11 12. Additionally, Respondents’ reliance on *Matter of M-S-*, 27 I. & N. Dec. 509  
12 (A.G. 2019), and *Zelaya-Gonzalez v. Barr*, 958 F.3d 965 (9th Cir. 2020), is  
13 misplaced. Suhayb does not seek a bond hearing or release into the community. He  
14 challenges, instead, the government’s misclassification and placement of a person  
15 who may be a child in adult immigration detention, and seeks transfer to  
16 TVPRA-compliant custody under ORR. Neither *M-S-* nor *Zelaya-Gonzalez*  
17 addressed, let alone foreclosed, constitutional or statutory challenges to the place and  
18 conditions of detention for minors.  
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22 **II. THE GOVERNMENT HAD MANDATORY TVPRA OBLIGATIONS**  
23 **TO TREAT SUHAYB AS AN UNACCOMPANIED MINOR CHILD**  
24 **AND TRANSFER HIM TO ORR WITHIN 72 HOURS; ITS FAILURE**  
25 **TO DO SO IS INDEPENDENTLY UNLAWFUL.**


26 13. The Trafficking Victims Protection Reauthorization Act, 8 U.S.C. § 1232,  
27 establishes a mandatory framework for the treatment of unaccompanied minor  
28 children in federal immigration custody. These obligations are not discretionary.

1 When the government encounters an individual who is or may be an unaccompanied  
2 minor, the law imposes firm, time-sensitive duties.

3  
4 14. Under 8 U.S.C. § 1232(b)(3), DHS is required to “transfer the custody of such  
5 a child” to the Secretary of Health and Human Services, through ORR, “not later than  
6 72 hours after determining that such child is an unaccompanied alien child.” The  
7 TVPRA further mandates that ORR “ensure, to the greatest extent practicable” that  
8 UACs are “promptly placed in the least restrictive setting that is in the best interest of  
9 the child.” 8 U.S.C. § 1232(c)(2)(A).

10  
11  
12 15. The government’s position in its Return is that Suhayb is an adult, and  
13 therefore no TVPRA obligations attach. But this argument places the cart before the  
14 horse. The question is not whether the government ultimately determines Suhayb to  
15 be a minor—it is whether the government followed the mandatory, TVPRA-  
16 compliant procedures for making that determination before housing a potential child  
17 in an adult detention facility.

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20 16. The TVPRA mandates that age determinations be made based on “the totality  
21 of the evidence, including the non-exclusive use of radiographs.” 8 U.S.C. §  
22 1232(b)(4). The government did not comply. As set forth in the Habeas Petition and  
23 the supporting record, Suhayb possesses a certified Ethiopian birth certificate, school  
24 records, and a national identity card establishing his date of birth as 

25  
26  The government failed to meaningfully engage with this documentary evidence  
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28

1 and instead treated a forensic dental X-ray—a single, probabilistic metric with well-  
2 documented scientific limitations—as dispositive.

3  
4 17. Under the ORR Policy Guide implementing § 1232(b)(4), “dental maturity  
5 assessments using radiographs may be used as one of several tools to assist in the age  
6 determination process, but may not be the sole basis for the age determination.” ORR  
7 Guide § 1.6.2. Courts across the country have enjoined the government on  
8 substantially similar facts. See, e.g., *B.I.C. v. Asher*, No. C16-132-MJP-JPD (W.D.  
9 Wash. Feb. 19, 2016); *N.B. v. Barr*, No. 19-CV-1536 JLS (LL) (S.D. Cal. Oct. 1,  
10 2019).  
11  
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13 18. Respondents also emphasize that Suhayb initially declined a dental X-ray.  
14 That hesitation, at a time when he had no legal representation and did not understand  
15 the purpose or implications of the procedure, does not support an inference of  
16 adulthood. Once he obtained counsel and was advised that the test was part of the  
17 age-determination process, Suhayb was willing to cooperate. In any event, under 8  
18 U.S.C. § 1232(b)(4) and ORR Guide § 1.6.2, radiographs are at most one data point  
19 among many; an initial refusal cannot justify disregarding documentary proof of  
20 minority.  
21  
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23  
24 19. The government’s failure to conduct a TVPRA-compliant age determination,  
25 and its failure to transfer Suhayb to ORR custody within 72 hours as required by §  
26 1232(b)(3), is a violation of federal law that supports habeas relief independent of any  
27 constitutional question. Statutory violations of the TVPRA are cognizable in habeas  
28

1 proceedings before this Court. *Singh v. Holder*, 638 F.3d 1196, 1202–03 (9th Cir.  
2 2011).

3  
4 20. Although Respondents invoke ‘totality of the evidence’ language from 8  
5 U.S.C. § 1232(b)(4), their own Return reveals that they relied primarily on an  
6 English-only sworn statement and an irregular passport, and treated a single,  
7 probabilistic dental X-ray as confirmatory rather than merely one tool among many.  
8 This is the opposite of the holistic, child-protective approach mandated by §  
9 1232(b)(4) and ORR Guide § 1.6.2.  
10

11  
12 21. Respondents cite *C.T.M. v. Moore*, 194 F. Supp. 3d 850 (D. Ariz. 2016). for  
13 the proposition that traveling on an adult passport creates ‘reasonable suspicion’ of  
14 adulthood. Even if that were so, reasonable suspicion is the beginning of an age  
15 inquiry, not the end. Once Suhayb produced a certified birth certificate, school  
16 records, and a national identity document consistently placing his birth in 2008,  
17 Respondents were required to engage with that contrary evidence under the totality  
18 standard rather than effectively defaulting to the passport and dental imaging.  
19  
20

21 **III. THE I-213 INTERVIEW IS UNRELIABLE BECAUSE IT WAS**  
22 **CONDUCTED IN ENGLISH WITHOUT AN INTERPRETER;**  
23 **EVIDENCE OBTAINED UNDER SUCH CONDITIONS CANNOT BE**  
24 **GIVEN PROBATIVE WEIGHT.**

25  
26 22. The government relies substantially on the I-213 (Record of  
27 Deportable/Inadmissible Alien) and the sworn statement (Form I-867A) as evidence  
28 of Suhayb’s age. Both documents reflect statements taken from Suhayb on January 5,  
2026, at the Imperial Beach, California Border Patrol Station.

1 23. The I-867A and I-213 reveal a critical deficiency: the interview was conducted  
2 entirely in English. The form itself states “Interpreter: NONE USED.” Suhayb’s  
3 native language is Somali. He is a native and citizen of Ethiopia of Somali ethnicity  
4 who grew up in the Somali-speaking Jigjiga region of Ethiopia. English is not his  
5 first, second, or primary working language.  
6



7  
8 24. The unreliability of the English-language interview is further underscored by  
9 the I-213’s own internal inconsistency: Border Patrol Agent Marco Malta informed  
10 Suhayb of his consular rights “in the Spanish language”—suggesting that the  
11 interviewing officers were not certain what language Suhayb understood, and  
12 nonetheless proceeded with an English-language sworn statement.  
13

14  
15 25. An interview conducted in a language the subject does not fluently understand  
16 cannot be a reliable record of that person’s statements, let alone his actual date of  
17 birth. Courts have recognized the fundamental unfairness—and evidentiary  
18 unreliability—of administrative interviews conducted without appropriate language  
19 assistance. *Perez v. Mukasey*, 541 F.3d 987, 991 (9th Cir. 2008) (noting that accuracy  
20 of the record depends on meaningful communication). Where a subject cannot  
21 meaningfully communicate in the language of the interview, the resulting record  
22 reflects the government’s interpretation—not the subject’s testimony.  
23  
24


25 26. To the extent the I-213 records that Suhayb stated his father ‘legally obtained’  
26 an Ethiopian passport, that phrase is the officer’s characterization, not Suhayb’s  
27 informed legal conclusion. In an interview he could not understand, Suhayb could not  
28


1 have meaningfully distinguished between a passport obtained through regular  
2 channels and one obtained through a friend's intervention that embedded an incorrect  
3 name and date of birth.  
4

5 27. Moreover, the January 5, 2026 sworn statement was not even signed by  
6 Suhayb. The government's own exhibit shows that Suhayb never verified or adopted  
7 the English language narrative as his own. An unsigned, English-only statement from  
8 a newly arrived, Somali-speaking asylum seeker—recorded by an agent who  
9 alternately used English and Spanish—is not reliable evidence of Suhayb's actual  
10 statements, much less of his age.  
11  
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13 28. The I-213 reflects a date of birth of  making Suhayb 25  
14 years old. This stands in direct conflict with Suhayb's certified birth certificate, which  
15 establishes his date of birth as . The government has not explained  
16 how Suhayb—interviewed in a language he does not natively speak, without an  
17 interpreter, on the day of his apprehension—could have meaningfully affirmed,  
18 disputed, or understood the biographical data being recorded. This Court should give  
19 the I-213 no weight as evidence of Suhayb's age.  
20  
21

22  
23 **IV. THE PASSPORT BIRTHDATE CANNOT BE RELIABLY**  
24 **ATTRIBUTED TO SUHAYB; A DOCUMENT OBTAINED**  
25 **THROUGH IRREGULAR CHANNELS AND CONTAINING AN**  
26 **ERRONEOUS NAME IS NOT PROOF OF AGE.**

27 29. The government also relies on an Ethiopian passport as evidence of Suhayb's  
28 date of birth. According to the record, this passport listed a date of birth of 

1 , and bore the name “Suhayb Muhumed Abdi”—not Suhayb’s actual surname,  
2 Dable.

3  
4 30. Two facts critically undermine reliance on this passport as evidence of  
5 Suhayb’s age. First, the passport was not obtained by Suhayb, and not obtained by his  
6 father. It was obtained by a friend of his father—a third party with no direct legal  
7 relationship to Suhayb. A passport obtained through such means cannot be presumed  
8 to accurately reflect the holder’s biographical information.  
9


10 31. Second, and critically, the name on the passport is wrong. The document bore  
11 the surname “Abdi,” not “Dable.” If the name field of the passport is incorrect—and  
12 Suhayb himself acknowledged the name was not his—there is no logical or legal  
13 basis for treating the birthdate field of the same document as accurate. These errors  
14 do not stand independently of one another. A document that contains one  
15 demonstrably incorrect biographical fact cannot be accepted as reliable proof of  
16 another.  
17  
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19 32. Whatever phrase the Border Patrol officer used, Suhayb himself—a minor—  
20 had no role in procuring or verifying the passport. It was obtained entirely by adults,  
21 through a friend of his father, at a time when Suhayb did not personally interact with  
22 issuing authorities. Any errors in the document’s contents therefore reflect those  
23 adults’ choices or the issuing office’s practices, not Suhayb’s age or intent.  
24  
25

26 33. Nor does Suhayb’s report that the passport was later lost in Mexico enhance its  
27 probative value. A missing document whose contents cannot be inspected or  
28

1 forensically verified cannot credibly outweigh a certified birth certificate and  
2 consistent educational and identity records.  
3

4 34. The government's argument effectively asks this Court to accept that the  
5 passport is unreliable enough to justify using a different name in these proceedings,  
6 yet reliable enough to establish Suhayb's date of birth as 2000 rather than 2008. That  
7 position is internally incoherent. If the document had errors that affected Suhayb's  
8 position is internally incoherent. If the document had errors that affected Suhayb's  
9 identity, it may have errors that affected his stated birthdate.

10 35. A certified birth certificate, issued by a government authority close, is the  
11 most probative documentary evidence of age. Suhayb possesses such a certificate. It  
12 establishes his date of birth as  The government has not  
14 demonstrated that this certificate is fraudulent; it has merely expressed suspicion.  
15 Suspicion is not evidence. The Court should accord the birth certificate its proper  
16 evidentiary weight and give no weight to the passport birthdate obtained through  
17 irregular means.  
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19  
20 36. Furthermore, Suhayb's certified birth certificate is not a free-floating  
21 document. It is corroborated by his sworn declaration, by school records, and by a  
22 national identity card that repeat the same biographical details, including his 2008  
23 birth year. Respondents identify no inconsistency among these documents, nor any  
24 expert evidence of forgery; they simply point to the absence of a photograph, which  
25 is common for civil records in Ethiopia.  
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1       **V.     THE EXHAUSTION DOCTRINE DOES NOT BAR THIS HABEAS**  
2           **PETITION.**  
3

4       37. The government invokes the Ninth Circuit’s prudential exhaustion doctrine,  
5       citing *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), and  
6       *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011), and asks this  
7       Court to dismiss or stay proceedings until the Immigration Judge rules on  
8       Suhayb’s age at the May 28, 2026 master calendar hearing. That request should  
9       be denied. Suhayb bears the burden of demonstrating grounds for excusing the  
10       exhaustion requirement, *Leonardo*, 646 F.3d at 1160, and Suhayb meets that  
11       burden through multiple independently sufficient grounds.  
12

13           **a. The Question Before This Court Is Not Pending Before the**  
14           **Immigration Court.**  
15

16       38. As a threshold matter, the government’s exhaustion argument misidentifies  
17       what is at issue. The IJ will adjudicate whether Suhayb is eligible for asylum relief—  
18       a question that turns on the merits of his protection claim and, incidentally, his age  
19       for purposes of immigration eligibility. This Court has been asked to resolve a  
20       categorically distinct question: whether it is lawful to detain a potential minor child in  
21       an adult immigration detention facility, without the procedural protections that the  
22       TVPRA and the Fifth Amendment require for minor children. See *Preiser v.*  
23       *Rodriguez*, 411 U.S. 475, 484 (1973) (federal courts retain authority under § 2241 to  
24       “inquire into the legality of [a petitioner’s] custody”). These questions do not overlap.  
25  
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1 The IJ's eventual ruling—whatever it concludes on age—will not resolve whether the  
2 government's pre-ruling detention of a potential minor in adult ICE custody is lawful.  
3  
4 Because no pending administrative proceeding addresses the question this Court is  
5 asked to decide, the exhaustion doctrine does not apply.

6 **b. No Adequate Administrative Remedy Exists for the Relief Petitioner**  
7  
8 **Seeks.**

9 39. Even where administrative remedies exist, a petitioner need not exhaust them  
10 when the available remedies do not provide an adequate avenue of relief. *Laing v.*  
11 *Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). The administrative remedy the  
12 government identifies—an IJ ruling on age at the May 28 hearing—cannot provide  
13 the relief Suhayb seeks and is therefore inadequate.  
14

15  
16 40. The IJ has no authority to: (1) order DHS to conduct a TVPRA-compliant age  
17 determination under 8 U.S.C. § 1232(b)(4); (2) direct ICE to transfer Suhayb to ORR  
18 custody as required by 8 U.S.C. § 1232(b)(3); or (3) enjoin ICE from continuing to  
19 house a potential minor in an adult detention facility. The IJ's jurisdiction is limited  
20 to adjudicating Suhayb's underlying immigration proceedings. See 8 C.F.R. §  
21 1003.10. An administrative forum that lacks authority to grant the requested relief  
22 cannot constitute an "adequate" remedy for exhaustion purposes. Because the  
23 immigration court is categorically unable to order the transfer, the revised age  
24 determination, or the enjoining of ICE detention conditions that Petitioner seeks,  
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1 requiring exhaustion of that process would accomplish nothing and change nothing  
2 about the lawfulness of Suhayb’s ongoing detention.  
3

4 41. *Castro-Cortez* and *Leonardo* do not compel a different result. *Castro-Cortez*  
5 arose in the context of a deportation order—not the detention of a potential child in  
6 an adult facility. See 239 F.3d at 1041. And *Leonardo*’s instruction to “dismiss  
7 without prejudice or stay” proceedings applies only where exhaustion is not  
8 otherwise excused. 646 F.3d at 1160. For the reasons set forth below, exhaustion is  
9 excused here on multiple grounds.  
10  
11

12 **c. Petitioner’s Constitutional Claims Are Categorically Exempt from**  
13 **the Exhaustion Requirement.**

14 42. The Ninth Circuit has consistently held that constitutional claims need not be  
15 administratively exhausted before being raised in habeas. *Hernandez v.*  
16 *Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Administrative agencies,  
17 including immigration judges, lack authority to adjudicate constitutional  
18 violations. To require exhaustion of constitutional claims before a tribunal that  
19 cannot adjudicate them would be to eliminate the constitutional claims  
20 entirely—a result the Ninth Circuit has firmly rejected. *Id.* Suhayb raises an as-  
21 applied due process challenge: the government is detaining a person who may  
22 be a child in an adult facility, without the procedural protections federal law  
23 requires for children, based on a flawed age determination process. That  
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1 constitutional challenge is properly before this Court under § 2241 without  
2 prior administrative exhaustion.

3  
4 **d. Requiring Exhaustion Would Cause Irreparable Harm and**  
5 **Exhaustion Would Be Futile.**

6 43. Exhaustion also does not apply where exhaustion would cause irreparable  
7 harm or would be futile. *Laing*, 370 F.3d at 1000. Both exceptions apply here.

9 44. First, every day Suhayb spends in adult immigration detention—potentially as  
10 a minor—causes ongoing, concrete harm that cannot be remedied after the fact.  
11 Suhayb is housed in an adult facility without access to the educational services,  
12 individualized care, legal representation, and psychological support that federal law  
13 mandates for minors. He has been exposed to the risks inherent in adult immigration  
14 detention, including the documented incident of sexual harassment the government  
15 attempts to dismiss as hearsay. These harms accumulate daily. No ruling by the IJ at  
16 the May 28 hearing—or at any later date—can restore the weeks and months Suhayb  
17 will have spent unlawfully detained in an adult facility if this Court waits.

21 45. Respondents point to a February 19, 2026 altercation at Otay Mesa, labeling  
22 Suhayb the ‘aggressor’ and citing a Code 223 classification. Suhayb’s account,  
23 however, is that he was subjected to ongoing harassment in the adult unit and reacted  
24 defensively in a tense confrontation. Whether or not both parties share responsibility,  
25 this incident underscores—not undermines—the central problem: housing a person  
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1 who may be a child in an adult detention facility predictably exposes him to adult  
2 conflict and risk, precisely what the TVPRA was designed to prevent.  
3

4 46. Additionally, Respondents used *County of Sacramento v. Lewis*, 523 U.S. 833  
5 (1998) to argue that there has been no due process violation here. *County of*  
6 *Sacramento v. Lewis* involved a high-speed police chase and the standard for  
7 substantive due process liability in that context; it did not address prolonged civil  
8 detention of children in facilities designed for adults. Even under a demanding  
9 standard, the knowing decision to disregard TVPRA safeguards and confine a  
10 potential minor in adult immigration detention for months, despite contrary birth  
11 records and identity documents, is arbitrary and capricious.  
12  
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14 47. Second, exhaustion would be futile. The government argues that the IJ is “best  
15 positioned” to resolve the age question, and that the May 28 hearing will produce a  
16 record. But the IJ’s age determination, even when made, will not cause DHS to  
17 transfer Suhayb to ORR or to alter his detention conditions. DHS has given no  
18 indication that it will comply with TVPRA obligations regardless of the IJ’s findings.  
19 Requiring Suhayb to await a proceeding that will not produce the requested relief,  
20 before a tribunal that cannot order it, is the definition of futility.  
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24 48. The government further suggests there has been no undue delay because  
25 counsel only began seeking release on March 11, 2026. This framing is wrong. The  
26 relevant period is not when counsel appeared but when the unlawful detention began.  
27 If Suhayb is in fact a minor, he has been unlawfully detained in an adult facility since  
28

1 his arrival at ICE custody in January 2026. The harm has been ongoing for months.  
2 Measuring exhaustion from counsel’s appearance, rather than from the onset of  
3  
4 detention, would allow the government to benefit from the delay in Suhayb obtaining  
5 legal representation—a perverse result that this Court should not countenance.

6 49. Additionally, immigration detainees, particularly non-English-speaking  
7  
8 asylum seekers, routinely face weeks or months before securing representation.  
9 Conditioning access to habeas relief on the speed with which a detained, indigent  
10 noncitizen can retain counsel would effectively nullify the protections of § 2241 for  
11  
12 the very individuals who need them most.

13  
14  
15 **CONCLUSION**

16 50. For the foregoing reasons, Petitioner respectfully urges this Court to reject the  
17 government’s Return, sustain the Petition for Writ of Habeas Corpus, and grant  
18 Petitioner the relief requested. The government’s detention of Suhayb—a potential  
19 minor child—in an adult immigration detention facility, based on a flawed age  
20 determination, a language-compromised interview, and an irregular passport, violates  
21 both the TVPRA and the Fifth Amendment’s Due Process Clause. *Jennings v.*  
22  
23 *Rodriguez* did not close the constitutional door on this challenge; the TVPRA opened  
24 a statutory one that the government has ignored; and this Court has full jurisdiction to  
25  
26 provide a remedy.  
27  
28

1 DATED: April 22, 2026

2

3

4 Respectfully submitted,

5 /s/ Christina Tong

6 Christina Liao Tong (CA Bar No. 337433)

7 LAW OFFICES OF JANE OAK & ASSOCIATES, P.C.

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9 Attorney for Petitioner

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