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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KHALIL SHAHIN,

Petitioner

v.

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

Todd LYONS, Acting Director,
U.S. Immigration and Customs Enforcement;

Patrick DIVER, Field Office Director,
San Diego Field Office, U.S. Immigration and
Customs Enforcement;

Christopher LAROSE, Senior Warden,
Otay Mesa Detention Center;

Sirce OWEN, Acting Director of the Executive
Office for Immigration Review (EOIR),
U.S. Department of Justice;

Pamela BONDI, Attorney General,
U.S. Department of Justice;

Respondents.

Case No.: '25CV2496 AGS KSC

Agency File No: A 

**PETITION FOR WRIT OF
HABEAS CORPUS AND
REQUEST FOR ORDER TO
SHOW CAUSE WITHIN THREE
DAYS**

INTRODUCTION

1. Petitioner, Khalil SHAHIN, (DOB: ) is a young adult native of Morocco and citizen of Syria who entered the United States near Tecate, California, on or about November 20, 2024. He was taken into the custody of U.S. immigration authorities and transferred to Immigration and Customs Enforcement (“ICE”), and he has since remained detained at the Otay Mesa Detention Center for nearly ten months.

2. Petitioner has never been charged with or convicted of any crime. On April 3, 2025, the Superior Court of the State of California made Special Immigrant Juvenile Findings (“SIJF”), having determined that reunification with either or both of his parents was not viable, and appointed Janet Clare Miller, Esq., a U.S. citizen, as his Legal Guardian. Although the Letters of Guardianship expired when Petitioner turned twenty-one, Ms. Miller continues to serve as his primary support person and remains committed to his care upon release. Petitioner also has a pending Form I-360 Petition for Special Immigrant Juvenile Status (“SIJS”) with USCIS. USCIS received Petitioner’s I-360 on April 9, 2025. Petitioner also has a timely-filed Form I-589 application for asylum and withholding of removal.

3. Despite these equities, the Immigration Court denied his motion for custody redetermination on August 4, 2025, concluding that it lacked jurisdiction under INA § 235(b) and *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019). As a result, no neutral adjudicator has considered whether Petitioner’s prolonged civil confinement is necessary to serve any legitimate purpose.

4. Petitioner’s detention has now become unreasonably prolonged in violation of the Due Process Clause of the Fifth Amendment. Civil immigration detention is permissible only when reasonably related to its limited purposes of ensuring appearance at proceedings or protecting the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011). Here, Petitioner’s confinement is no longer reasonably connected to those purposes. While he has diligently pursued lawful relief—including asylum and SIJS protection—his continued detention rests solely on categorical statutory rules and adjudicatory

1 delays entirely beyond his control. At this stage, lawful custody has been transformed into
2 unconstitutional punishment.

3 5. Absent habeas review, Petitioner faces indefinite incarceration despite the State
4 Court's having made Special Immigrant Juvenile Findings ("SIJF"), his having filed a pending I-
5 360 application for Special Immigrant Juvenile Status ("SIJS"), and his timely-filed petition for
6 lawful relief. In addition, Petitioner has the support of Janet Clare Miller, Esq., a U.S. citizen
7 who was previously appointed as his legal guardian while he was a minor and who continues to
8 serve as his trusted mentor and primary support person. Ms. Miller remains ready and able to
9 assume full responsibility for him upon release. Petitioner, therefore, respectfully seeks a writ of
10 habeas corpus ordering his immediate release to Ms. Miller's care, custody, and supervision, or
11 at a minimum, directing Respondents to provide him with a constitutionally adequate bond
12 hearing at which the government bears the burden of proof by clear and convincing evidence.

13 14 **JURISDICTION AND VENUE**

15 6. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in the custody
16 of the Department of Homeland Security within this District and he challenges the legality of
17 that custody.

18 7. This Court also has jurisdiction under 28 U.S.C. § 1331 because this action arises
19 under the Constitution and laws of the United States, including the Immigration and Nationality
20 Act and the Due Process Clause of the Fifth Amendment.

21 8. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) strips this Court of jurisdiction. Section
22 1252(g) bars only challenges to the Attorney General's discretionary decisions to "commence
23 proceedings, adjudicate cases, or execute removal orders," not independent challenges to
24 unlawful detention. Likewise, § 1252(b)(9) consolidates review of removal orders in the courts
25 of appeals, but does not foreclose habeas review of detention claims, which are collateral to the
26 removal proceedings.

1 9. Venue is proper in this District under 28 U.S.C. § 1391(e) because Petitioner is
2 detained at the Otay Mesa Detention Center, which lies within the jurisdiction of this Court.
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5 **PARTIES**

6 10. Petitioner, Khalil Shahin, is a young adult native of Morocco and citizen of Syria
7 detained at the Otay Mesa Detention Center, in San Diego, California.

8 11. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland
9 Security (DHS).

10 12. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs
11 Enforcement (ICE).

12 13. Respondent Patrick Divver is the Director of the San Diego Field Office of U.S.
13 Immigration and Customs Enforcement.

14 14. Respondent Christopher LaRose is the Senior Warden of the Otay Mesa Detention
15 Center.

16 15. Respondent Sirce Owen is the Acting Director of the Executive Office for
17 Immigration Review (EOIR).

18 16. Respondent Pamela Bondi is the Attorney General of the United States and the head
19 of the U.S. Department of Justice (DOJ).

20 17. All Respondents are named in their official capacities.
21

22 **FACTS**

23 18. Petitioner, Khalil Shahin, is a native of Morocco and citizen of Syria who entered the
24 United States near Tecate, California, on or about November 20, 2024.

25 19. Upon entry, Petitioner was taken into custody by U.S. immigration authorities,
26 referred to credible fear proceedings, and transferred to Immigration and Customs Enforcement
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1 (“ICE”) custody at the Otay Mesa Detention Center in San Diego County, California, where he
2 has remained continuously detained for nearly ten months.

3 20. On April 3, 2025, the Superior Court of California issued an order granting the relief
4 requested by Petitioner. The Court made Special Immigrant Juvenile Findings (“SIJF”), having
5 determined that reunification with his parents was not viable and that it was not in his best
6 interests to return to his country of nationality. Following that determination, the Court appointed
7 Janet Clare Miller, Esq., a U.S. citizen attorney, as Petitioner’s Legal Guardian and signed the
8 Guardianship Order. On April 4, 2025, the court issued Letters of Guardianship formally
9 appointing Ms. Miller as Petitioner’s Legal Guardian. Although the Letters of Guardianship
10 expired when Petitioner turned twenty-one, Ms. Miller remains his trusted mentor and designated
11 support person, and she is willing and able to assume responsibility for him upon release. See
12 Exhibit 2 (Letters of Guardianship, April 4, 2025).

13 21. Petitioner’s Legal Guardian, Janet Clare Miller, Esq., filed a Form I-360, Petition for
14 Special Immigrant Juvenile Status, with U.S. Citizenship and Immigration Services (“USCIS”).
15 USCIS issued a receipt notice confirming that it received the I-360 on April 9, 2025, which is the
16 petition’s priority date. The notice was dated April 14, 2025, and the petition remains pending
17 adjudication. *See* Exhibit 3 (USCIS I-360 Receipt Notice, Apr. 14, 2025).

18 22. Petitioner also timely filed a Form I-589, Application for Asylum and Withholding of
19 Removal, based on his well-founded fear of persecution in both Syria and Morocco. That
20 application remains pending before the Immigration Court.

21 23. Petitioner has no criminal history whatsoever. He has never been charged with,
22 arrested for, or convicted of any crime in the United States or abroad.

23 24. On July 23, 2025, Petitioner moved the Immigration Court for custody
24 redetermination. The motion argued that his prolonged detention violated due process and that he
25 merited release given his strong equities, including his state court guardian and pending SIJS and
26 asylum claims.

1 25. On August 4, 2025, the Immigration Judge denied Petitioner’s motion for custody
2 redetermination, concluding that the court lacked jurisdiction under INA § 235(b) and *Matter of*
3 *M-S-*, 27 I&N Dec. 509 (A.G. 2019). The IJ held that individuals in Petitioner’s posture—who
4 had established a credible fear—must remain detained absent DHS parole. See Exhibit 4
5 (Immigration Judge Custody Redetermination Order, Aug. 4, 2025).

6 26. As a result, Petitioner has been categorically denied any bond hearing before a neutral
7 adjudicator. Petitioner remains detained indefinitely under a mandatory detention regime, despite
8 his young age at entry, the appointment of a qualified U.S. citizen as Legal Guardian, and his
9 pending I-360 SIJS Petition with USCIS, along with his asylum application.

10 27. Petitioner’s prolonged detention has caused severe psychological harm. This ongoing
11 confinement undermines the very protection Congress intended in creating Special Immigrant
12 Juvenile Status, which recognizes that juveniles are particularly vulnerable and should be placed
13 in stable, supportive care rather than prolonged detention.

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15 **REQUIREMENTS OF 28 U.S.C. § 2243**

16 28. The Court must grant the petition for writ of habeas corpus or issue an Order to Show
17 Cause (“OSC”) to Respondents “forthwith,” unless it appears from the petition that the petitioner
18 is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require
19 Respondents to file a return “within three days unless for good cause additional time, not
20 exceeding twenty days, is allowed.” *Id.* (emphasis added).

21 29. Courts have long recognized the significance of the habeas statute in protecting
22 individuals from unlawful detention. As the Supreme Court explained, the Great Writ is “perhaps
23 the most important writ known to the constitutional law of England, affording as it does a swift
24 and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S.
25 391, 400 (1963).

26 The statutory design makes clear that habeas corpus must remain a swift remedy. “The
27 statute itself directs courts to give petitions for habeas corpus ‘special, preferential consideration
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1 to insure expeditious hearing and determination.” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir.
2 2000) (internal citations omitted). The Ninth Circuit has expressly cautioned against undue delay
3 that would frustrate the remedial purpose of habeas corpus, warning against any action creating
4 the perception “that courts are more concerned with efficient trial management than with the
5 vindication of constitutional rights.” *Id.* at 1121.

6 7 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

8 31. For habeas claims, exhaustion of administrative remedies is prudential, not
9 jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the
10 prudential exhaustion requirement where “administrative remedies are inadequate or not
11 efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will
12 result, or the administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d
13 994, 1000 (9th Cir. 2004)). Petitioner respectfully submits that exhaustion should be excused
14 here because administrative remedies are futile and because his continued detention results in
15 irreparable harm.

16 32. Exhaustion here would be futile. On August 4, 2025, the Immigration Judge denied
17 Petitioner’s motion for custody redetermination, concluding that the court lacked jurisdiction
18 under INA § 235(b) and *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019). Immigration Judges in
19 this district have consistently held that they lack authority to conduct bond hearings for
20 individuals placed in § 240 proceedings after establishing credible fear. ICE likewise maintains
21 that Petitioner is subject to mandatory detention and therefore categorically ineligible for release
22 absent parole, which the agency rarely grants. Accordingly, any attempt to exhaust
23 administrative remedies would serve no purpose and should be excused.

24 33. More importantly, every additional day Petitioner remains detained inflicts
25 irreparable harm that cannot be remedied after the fact. His prolonged confinement exacerbates
26 psychological suffering, increases vulnerability to institutional trauma, and undermines the
27 humanitarian protections Congress intended through the Special Immigrant Juvenile statute.

1 Courts have recognized that such ongoing harm warrants waiver of prudential exhaustion. See
2 *De Paz Sales v. Barr*, No. 19-CV-07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21,
3 2020) (waiving exhaustion where petitioner “continues to suffer significant psychological effects
4 from his detention, including anxiety caused by the threats of other inmates and two suicide
5 attempts”).

6
7 **CLAIM FOR RELIEF**

8
9 **COUNT 1**

10 **Violation of the Due Process Clause of the Fifth Amendment**

11 34. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth
12 herein.

13 35. The Fifth Amendment to the United States Constitution provides that “[n]o person
14 shall be deprived of life, liberty, or property, without due process of law.”

15 36. “Freedom from imprisonment—from government custody, detention, or other form of
16 physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533
17 U.S. 678, 690 (2001).

18 37. Civil immigration detention is constitutionally permissible only when reasonably
19 related to legitimate governmental objectives, such as ensuring appearance at proceedings or
20 protecting the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003). However, detention that is
21 prolonged, unnecessary, or based solely on categorical statutory rules—without any
22 individualized assessment—ceases to be regulatory and becomes punitive in effect, violating the
23 Due Process Clause.

24 38. Here, Petitioner has now been detained for over nearly ten months without any
25 neutral adjudicator assessing whether his confinement is necessary. He has no criminal history,
26 was previously appointed a U.S. Citizen Legal Guardian by a California Superior Court, County
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1 of San Diego, and has diligently pursued lawful relief, including a pending petition for SIJS and
2 a timely asylum application.

3 39. The government's continued detention of Petitioner, without affording him a
4 constitutionally adequate bond hearing where the government bears the burden of proof by clear
5 and convincing evidence, violates his rights under the Due Process Clause of the Fifth
6 Amendment.

8 **COUNT 2**

9 **Violation of the Immigration and Nationality Act (INA)**

10 40. Petitioner incorporates by reference the allegations of fact set forth in the preceding
11 paragraphs.

12 41. The Immigration and Nationality Act (INA) does not authorize prolonged detention
13 without a bond hearing where such custody ceases to be reasonably related to its purposes.
14 Congress provided detention authority under 8 U.S.C. § 1225(b) for the limited purpose of
15 facilitating inspection and asylum processing—not to sanction indefinite incarceration.

16 42. Courts have recognized that immigration detention statutes must be construed to
17 avoid serious constitutional concerns. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 842 (2018);
18 *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Construed properly, § 1225(b) does not authorize
19 detention of applicants for admission for periods so prolonged that they no longer bear a
20 reasonable relation to their statutory purposes.

21 43. Petitioner has now been detained for over nine months, despite having no criminal
22 history, a U.S. citizen legal guardian, and pending lawful applications for relief. Continued
23 detention under § 1225(b) without any opportunity for individualized bond consideration
24 exceeds the authority granted by Congress and violates the INA.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- A) Assume jurisdiction over this matter;
- B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this District while these proceedings are pending;
- C) Declare that Petitioner's continued detention without an individualized custody determination violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment;
- D) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately to the care of Janet Clare Miller, Esq., a U.S. citizen who was previously appointed by the California Superior Court as his Legal Guardian while he was a minor and who continues to serve as his trusted mentor and primary support person, ready and able to assume responsibility for him upon release; or, in the alternative, order a constitutionally adequate bond hearing before a neutral decision maker at which the Government must prove flight risk or danger by clear and convincing evidence;
- E) Award Petitioner attorney's fees and costs, including under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, to the extent applicable, and on any other basis authorized by law;
- F) Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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