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15
16 **UNITED STATES DISTRICT COURT**
17 **FOR THE DISTRICT OF ARIZONA**

18 O.E.O.,

19
20 Petitioner,

21
22 vs.

23 FRED FIGUEROA, Warden, Eloy Detention
24 Center; JOHN E. CANTU, Phoenix Field
25 Office; TODD M. LYONS, Acting Director
26 of U.S. Immigration and Customs
27 Enforcement; ROBIN DUNN MARCOS,
28 Director of the Office of Refugee
Resettlement; ANDREW GRADISON,
Assistant Secretary for the Administration of
Children and Families; ROBERT F.
KENNEDY, JR., Secretary of Health and
Human Services; LUCIBEL GAST, Federal
Field Specialist at the Office of Refugee
Resettlement; KRISTI NOEM, Secretary of
the U.S. Department of Homeland Security,

Respondents.

Case No.

**COMPLAINT AND PETITION
FOR WRIT OF HABEAS CORPUS**

REDACTED VERSION

Petitioner, O.E.O.,¹ respectfully petitions this Honorable Court for a writ of habeas corpus to remedy his unlawful detention by Respondents, as follows:

INTRODUCTION

1. Petitioner O.E.O. is a fifteen-year-old unaccompanied child from Afghanistan who is being unlawfully detained by Immigration and Customs Enforcement (“ICE”) at the Eloy Detention Center.² O.E.O. has no pending removal proceedings and is at imminent risk of removal from the United States because he is also unlawfully subject to an Expedited Removal Order pursuant to 8 U.S.C. § 1225(b)(1).

2. Despite clear evidence establishing that O.E.O. is a fifteen-year-old minor, ICE and Office of Refugee Resettlement (“ORR”) officials have violated their statutory obligations and internal policies governing the age redetermination³ of unaccompanied minors and incorrectly determined O.E.O. to be a twenty-two-year-old adult. The agencies’ age redeterminations failed to consider the “totality of the circumstances and evidence,” in violation of 8 U.S.C. § 1232(b)(4) and the agencies’ policy. This erroneous age redetermination resulted in Respondents unlawfully transferring Petitioner from custody in a children’s shelter in Fullerton, California, to detaining him with adults in a medium security ICE detention facility in remote Eloy, Arizona. Petitioner seeks an order from this Court requiring that (1) ICE and ORR immediately rescind their age re-determinations; (2) ICE and ORR do not apply their non-compliant age redetermination as the basis for the expedited removal, custody determinations, or

¹ Petitioner is referred to throughout by his initials, O.E.O., in compliance with Fed. R. Civ. P. 5.2(a)(3), which requires the use of a “minor’s initials” on any filing made before the court. O.E.O. is a fifteen-year-old unaccompanied child.

² An “unaccompanied child” is a child with no lawful immigration status in the United States, who is under the age of eighteen, and who has no parent or legal guardian in the United States. 6 U.S.C. § 279(g)(2).

³ The Trafficking Victims Protection Reauthorization Act of 2008 instructs the U.S. Department of Health and Human Services (“HHS”) to devise age determination procedures for individuals without lawful immigration status. “HHS may make age determinations of an unaccompanied child when they are in HHS custody if there is a reasonable suspicion that a child is 18 years or older.” See ORR Policy Guidance UC Guide § 1.6, Determining the Age of an Individual without Lawful Immigration Status, <https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.6> (last visited June 27, 2025).

1 other immigration relief made by the agency until ORR makes an age determination in
2 accordance with 8 U.S.C. 1232(b)(4) and ORR's Policy Guidelines; (3) ORR complete
3 an age determination in compliance with 8 U.S.C. 1232(b)(4) and its Policy Guidelines
4 within forty-eight hours of the date of this Order, in compliance with 8 U.S.C.
5 §1232(a)(4); and (4) ICE transfer O.E.O. to ORR custody within the next seventy-two
6 hours, in compliance with 8 U.S.C. 1232(b)(3), and that ORR release him to his sponsor
7 immediately and, in any case, no later than 3 days after his transfer to ORR custody, in
8 compliance with 8 U.S.C. § 1232(c)(2)(B), which requires prompt release to the least
9 restrictive setting.

10 JURISDICTION

11 3. This Court has subject matter jurisdiction over this matter pursuant to 28
12 U.S.C. § 2241 (habeas corpus), 8 U.S.C. § 1252(E)(2) (habeas corpus jurisdiction to
13 review determinations made under 8 U.S.C. § 1225(b)(1)), 28 U.S.C. § 1651 (All Writs
14 Act), and 28 U.S.C. § 1331 (federal question). This Court also has jurisdiction
15 pursuant to Art. 1, § 9, cl. 2 of the United States Constitution (the Suspension Clause).

16 4. Federal district courts have jurisdiction to hear habeas claims by
17 noncitizens challenging the lawfulness of their detention. *See Zadvydas v. Davis*, 533
18 U.S. 678, 687 (2001).

19 5. Administrative exhaustion is a prudential rather than a jurisdictional
20 requirement for habeas review under 28 U.S.C. § 2241. *See Acevedo-Carranza v.*
21 *Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004).

22 6. This action is also brought under the APA. Jurisdiction is proper under the
23 judicial review provision of the Administrative Procedure Act ("APA"), 5 U.S.C. §
24 702.

25 VENUE

26 7. Venue is proper in the District Court of Arizona under 28 U.S.C. §
27 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because O.E.O. is detained within
28 this district at the Eloy Detention Center in Eloy, Arizona.

8. This case is properly assigned to the Phoenix Division of this Court
pursuant to Local Rules 5.1(a) and 77.1(a).

PARTIES

I. Petitioner

9. Petitioner O.E.O. is an Afghan national and unaccompanied child currently detained by Respondents in adult ICE custody at the Eloy Detention Center in Eloy, Arizona. His date of birth is [REDACTED]. He is fifteen years old.

II. Respondents

10. Respondent Fred Figueroa is the Warden of Eloy Detention Center. He is responsible for the physical custody of Petitioner. He is sued in his official capacity.

11. Respondent John E. Cantu is the Field Office Director for the ICE Phoenix Field Office. Eloy Detention Center is located within the jurisdiction of the ICE Phoenix Field Office, which has legal authority over all individuals in ICE custody there. As acting Field Office Director, Mr. Cantu is a custodian of Petitioner with legal authority to produce and release him. Respondent Cantu is sued in his official capacity.

12. Respondent Todd M. Lyons is the Acting Director for ICE, a component agency of the United States Department of Homeland Security ("DHS"). ICE is responsible for enforcing the U.S. immigration laws, including the detention of alleged noncitizens in removal proceedings, which the agency chooses to accomplish through imprisonment and the removal of noncitizens. As ICE's Acting Director, Respondent Lyons is a custodian of Petitioner, with authority to produce and release O.E.O. Respondent Lyons is sued in his official capacity.

13. Respondent Kristi Noem is the Secretary of DHS. She is responsible for overseeing DHS and its sub-agency, ICE, and has ultimate responsibility for the detention of noncitizens in civil immigration custody. Respondent Noem is a legal custodian of Petitioner. She is named in her official capacity.

14. Respondent Robert F. Kennedy, Jr., is the Secretary of the Department of Health and Human Services ("HHS") and oversees the Administration of Children and Families ("ACF") and ORR and is therefore "head" of those agencies. 6 U.S.C. § 271(a)(2). HHS is responsible for the care and placement of unaccompanied children in federal custody. *See* 8 U.S.C. § 1232(c); 6 U.S.C. § 279. HHS and ORR enter

1 contracts with public and private entities to house, care for, and provide legal assistance
 2 to unaccompanied children apprehended by DHS pursuant to the Immigration and
 3 Nationality Act ("INA"). *See* 6 U.S.C. § 279. Respondent Kennedy is sued in his
 4 official capacity.

5 15. Respondent Andrew Gradison is the Assistant Secretary for the ACF. The
 6 ACF is the division within HHS that has responsibility for ORR. Respondent Gradison
 7 is sued in his official capacity.

8 16. Respondent Robin Dunn Marcos is the Director of ORR, the component of
 9 HHS responsible for implementing HHS's obligations to unaccompanied children who
 10 are immigrants. ORR is the government entity directly responsible for the age
 11 determination of O.E.O. Respondent Marcos is sued in her official capacity.

12 17. Respondent Lucibel Gast is an ORR Federal Field Specialist. Ms. Gast is
 13 the government official responsible for the care and custody of children who ORR has
 14 placed in the Crittenton Shelter facility in Fullerton, California. In this role, Ms. Gast is
 15 responsible for determining Petitioner's placement and has authority to approve his
 16 release to an appropriate sponsor's care. Respondent Gast is sued in her official
 17 capacity.

STATEMENT OF FACTS

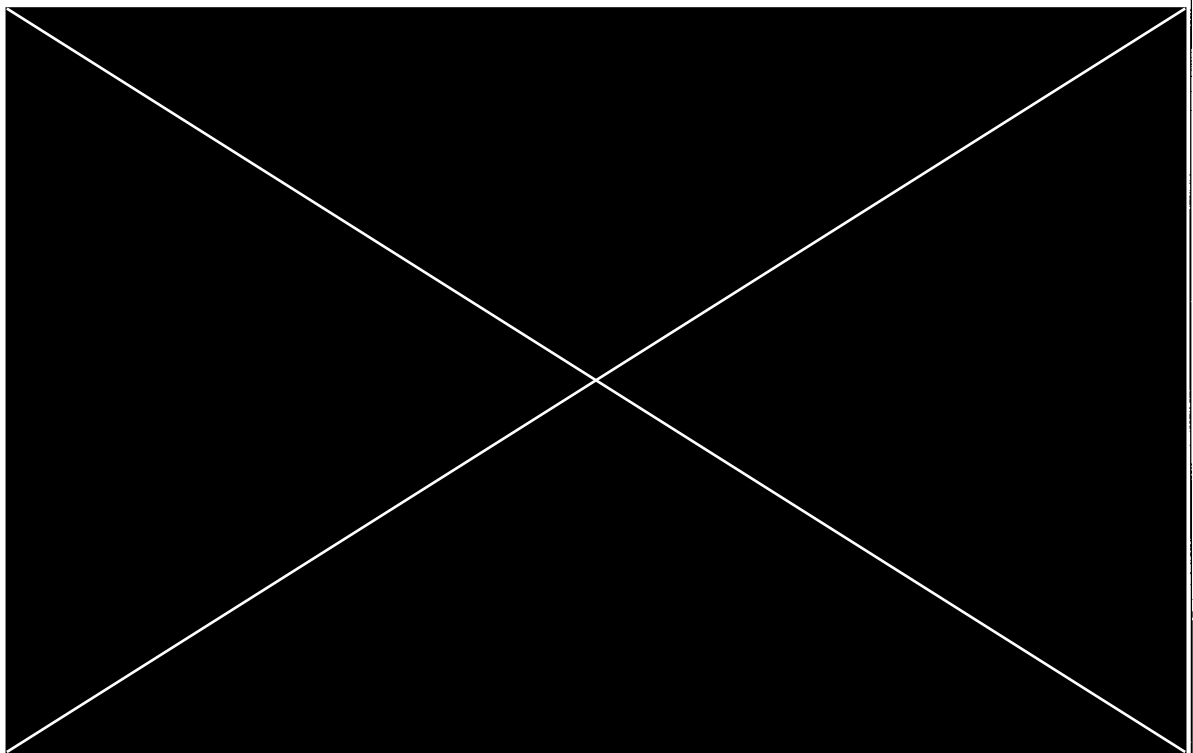
I. Petitioner Fled Afghanistan After

18 18. Petitioner, O.E.O. was born on [REDACTED], in Mazar-I-Sharif, where
 19 he lived with his parents and four siblings until 2024. *See* O.E.O Decl. ¶ 1; *see also*
 20 Ex. C, O.E.O.'s Tazkira. O.E.O. is the fourth-born child of his parents. O.E.O Decl. ¶
 21 1. His older siblings were born in 1999, 2000, and 2003. *Id.* His younger sibling was
 22 born in 2014. *Id.*

23 19. Approximately five years ago, shortly after the Taliban took over
 24 Afghanistan, [REDACTED]
 25 [REDACTED]
 26 [REDACTED]
 27 [REDACTED]

28 ⁴ O.E.O.'s family members are referred to by their initials to protect O.E.O.'s identity, in
 compliance with Fed. R. Civ. P. 5.2(a)(3), and that of his family members.

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country. *Id.* These documents included a fraudulent passport and a national identification document, both with the date of birth listed as [REDACTED]. *See* Ex. M, Fake Passport, Ex. N, Fake National ID Card.

21. O.E.O. traveled with his uncle from Afghanistan to the United States and entered using the U.S. Customs and Border Protection (“CBP”) One application on November 12, 2024. O.E.O. Decl. ¶¶ 7–8. Upon presenting himself to CBP officers, O.E.O. immediately informed CBP that his passport and national identification card were fraudulent, and that his true date of birth is [REDACTED]. O.E.O. Decl. ¶ 8.

22. O.E.O. was properly designated an unaccompanied child pursuant to 6 U.S.C. § 279 and transferred to ORR custody. O.E.O. Decl. ¶ 9; *see also* Ex. R, UC Portal Profile. O.E.O. was placed at Crittenton Foster Care and Foster Family Agency (“Crittenton Shelter”), in Fullerton, California, where he was provided pro bono legal services by Immigrant Defenders Law Center (“ImmDef”), a legal service provider contracted to represent unaccompanied children in ORR facilities. O.E.O. Decl. ¶ 9; Fox Decl. ¶ 5.

23. In March 2025, ImmDef attorney Alex Fox (“Ms. Fox”) was assigned O.E.O.’s case and entered full-scope legal representation for O.E.O. Fox Decl. ¶ 5.

Ms. Fox first met with O.E.O. on April 7, 2025, at Crittenton Shelter where she conducted a full legal intake. *Id.* at ¶¶ 6–7. Ms. Fox determined O.E.O. was prima facie eligible to apply for asylum and withholding of removal with the United States Citizenship and Immigration Services (“USCIS”) because the Trafficking Victims Protection Reauthorization Act (“TVPRA”) vests initial jurisdiction over asylum applications filed by unaccompanied children with USCIS. *Id.* at ¶¶ 7–8. Ms. Fox also determined O.E.O. is prima facie eligible for Special Immigrant Juvenile Status (“SIJS”). *Id.* at ¶ 8. On April 9, 2025, O.E.O.’s Form I-589 application for asylum was mailed to USCIS, which received the application on April 15, 2025. *See* Fox Decl. ¶ 11; *see also* Ex. S, I-589 Receipt Notice. On April 15, 2025, Ms. Fox appeared for O.E.O.’s immigration hearing and moved to terminate O.E.O.’s proceedings given his pending I-589. Fox Decl. ¶ 11. With no opposition from DHS, the immigration judge terminated O.E.O.’s INA Section 240 proceedings. *See id.*; *see also* 8 U.S.C. § 1232(a)(D)(i) (stating that if DHS seeks to remove an unaccompanied child, they “shall be . . . placed in removal proceedings under section 240 of the” INA). USCIS scheduled O.E.O. for a biometrics appointment on May 30, 2025, which O.E.O. could not attend due to his confinement. *Id.* at ¶ 10.

II. Respondents Failed to Consider the Totality of the Evidence in O.E.O.’s Age Redetermination

24. On November 16, 2024, CBP provided to the ORR Federal Field Specialist (“FFS”) the fake passport and national identity card that O.E.O. used to travel. *See* Ex. B, May 21, 2025 ORR Memo of Age Re-Determination (hereinafter “May 21 Memo”); *see also* Ex. M, Fake Passport; Ex. N, Fake National ID Card. These documents list O.E.O.’s date of birth as [REDACTED]. *See* Exs. M, N. However, O.E.O. has consistently reported his actual date of birth as [REDACTED], to both CBP and ORR officials. O.E.O. Decl. ¶ 8. On November 16, 2024, Crittenton Shelter contacted O.E.O.’s mother who stated that O.E.O.’s date of birth is [REDACTED]. *See* Ex. B, May 21 Memo. On November 18, 2024, O.E.O.’s fraudulent passport and national identity card were sent to the ORR Verification Team, which sent photographs of the documents to the Afghanistan Affairs Unit (“AAU”) for verification. *See* Ex. A, May

1, 20205 Memo of Age Re-Determination (hereinafter “May 1 Memo”).

25. On December 11, 2024, Crittenton Shelter received from O.E.O.’s mother his Tazkira, another type of Afghan identity document, which lists his birthday as [REDACTED]. *See* Ex. B, May 21 Memo; *see also* Ex. C, O.E.O.’s Tazkira. O.E.O.’s mother again stated that O.E.O.’s correct date of birth is [REDACTED]. *See* Ex. B, May 21 Memo. On January 2, 2025, a request was made to the AAU to verify the Tazkira, and there was no response. *See id.*

26. On February 3, 2025, ORR received an email replying to their November 18, 2024 request. *See id.* The response included the following quotation from the cultural advisors at the AAU:

We have reviewed the passport and digital ID you sent to verify their authenticity. They appear to be genuine and have cross referenced all the details with other passports . . . and everything aligns with what we would expect from a valid passport . . . still I noticed that the color seems a bit faded and may appear altered and could be due to the quality of the camera used to take the photo which might explain the faded and confusing appearance.”

On the other hand, **it is challenging to fully accept these documents as genuine without having the hard copies for extra examination.** We recommend that the peer agencies in possession of the passport and ID use an MRZ reader which easily can verify and authenticate passports and IDs. Also, it would be useful to compare these suspected passports with any other Afghan passports they may have on hand. If we had those passports at our possession, it would be much easier to determine authenticity, **but with looking only into photos, it is hard to come up with a conclusion.**

Ex. O, Feb. 3, 2025 Email Correspondence “Afghan-Document Verification Request” (emphasis added).

27. On March 21, 2025, another request was made to verify the Tazkira that O.E.O.’s mother sent in December 2024. *See* Ex B, May 21 Memo. On April 21, 2025, a person named Emily N. Benson replied via email to that request and stated “AAU advised that the minor’s passport and national ID appear genuine. The Tazkira, specifically the DOB section, appear to be digitally manipulated and fraudulent.” Ex. Q, April 21, 2025, Email Correspondence “Afghanistan-Document Verification Request.” Unlike the February 3, 2025 email, this email did not contain the direct quote from the AAU. *Compare* Ex. O *with* Ex. Q.

1 28. On May 1, 2025, O.E.O.'s case manager called Ms. Fox and informed her
2 that ORR had redetermined O.E.O.'s age and he was being designated as an adult and
3 transferred to adult ICE detention. *See* Fox Decl. ¶ 12. This was the first time Ms. Fox
4 was made aware that his age was in question. *See id.*

5 29. On May 2, 2025, O.E.O. was removed from the shelter in Fullerton,
6 California and taken into ICE custody. *Id.* Marion Donovan-Kaloust ("Ms.
7 Donovan"), a legal services director at Immigrant Defenders Law Center, was able to
8 contact Ms. Gast, who made this age redetermination. *See id.*; *see also* Ex. A, May 1
9 Memo (showing Ms. Gast as the signature of the Memo of Age Re-determination). Ms.
10 Donovan asked Ms. Gast to reconsider all the evidence under the circumstances
11 because transferring O.E.O., a fifteen-year-old boy, to an adult ICE facility would
12 cause him significant trauma if the determination was wrong. *See* Fox Decl. ¶ 12.

13 30. On May 2, 2025, O.E.O.'s mother provided O.E.O.'s school record and a
14 declaration from O.E.O.'s doctor, Dr. Faiz, to corroborate his minority. *See* Ex. D,
15 Certified School Report Letter from [REDACTED] *see also* Ex. E,
16 Statement from Doctor Zarghuna Faiz (Nesar), Adnaan Tabaan Hospital. Dr. Faiz, the
17 doctor who delivered O.E.O. in O.E.O.'s parents' home, declared that O.E.O. was born
18 on Saturday at 10 AM on [REDACTED]. Ex. E.

19 31. O.E.O.'s school records state that O.E.O. started attending school in 2017,
20 when he was seven years old, and attended school through the seventh grade, when he
21 was fourteen years old.⁵ *See* Ex. D. The school record provided to FFS Gast includes
22 the stamp from the Afghan Ministry of Education. *Compare* Ex. D (O.E.O.'s school
23 records with the stamp on the bottom left of the page) *with* Ministry of Education,
24 moe.gov.af (last visited June 27, 2025) (official website of the Afghan Ministry of
25 Education with the same emblem stamped on O.E.O.'s school record). O.E.O. started
26 school a little later than average in Afghanistan because he is blind in one eye. *See*
27 O.E.O. Decl. ¶ 4; *see also* Ex. Y, Declaration of S.O., June 10, 2025.

28 32. On May 2, 2025, ORR submitted O.E.O.'s doctor's statement and school

⁵ In Afghanistan, grades are referred to as "classes." Thus, O.E.O.'s school records show his enrollment from "first class" which is first grade, through "seventh class," which is seventh grade. *See* O.E.O. Decl. ¶ 4.

1 records to the State Department for verification, an extra layer of scrutiny that ORR and
2 ICE policy regulations do not contemplate, let alone require. *See* Ex. B, May 21
3 Memo; *see also* ORR Policy Guidance UC Guide § 1.6, Determining the Age of an
4 Individual without Lawful Immigration Status, [https://acf.gov/orr/policy-](https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.6)
5 [guidance/unaccompanied-children-program-policy-guide-section-1#1.6](https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.6) (last visited
6 June 27, 2025) (hereinafter “ORR Policy Guidance”).

7 33. Later that evening, O.E.O. was released back to ORR custody at Crittenton
8 Shelter while Ms. Gast reconsidered her prior determination. *See* O.E.O. Decl. ¶ 14.
9 After that day, O.E.O. started experiencing panic attacks and severe anxiety. *Id.* at ¶
10 15. O.E.O.’s anxiety became so severe, he was prescribed medication to help his
11 symptoms. *Id.* Between May 2, 2025, and May 22, 2025, O.E.O. was separated from
12 the other children at the shelter and was not allowed to attend school. *Id.* at ¶ 17.
13 Being alone for three weeks was difficult for O.E.O., and the isolation contributed to
14 his mental and emotional distress. *Id.*

15 34. On May 6, 2025, O.E.O. was told he would be going to the dentist so that
16 they could examine his age. *Id.* at ¶ 16.

17 35. On May 8, 2025, Ms. Fox emailed Ms. Gast requesting that O.R.R. “take
18 into account the totality of the circumstances and evidence in O.E.O.’s age
19 determination.” Ex. P, May 8, 2025 Email Correspondence between Lucibel Gast and
20 Alex Fox. Specifically, she requested that ORR consider the school record and
21 doctor’s statement corroborating O.E.O.’s date of birth, which were provided by
22 O.E.O.’s mother on May 2, 2025. *Id.* Ms. Fox also supplemented the evidence of
23 O.E.O.’s age with the following evidence: O.E.O.’s consistent statements of his age;
24 O.E.O.’s mother’s consistent statements of O.E.O.’s age; O.E.O.’s sister’s national ID
25 card, showing her date of birth as [REDACTED], making it physically impossible for
26 O.E.O.’s birth to have occurred on [REDACTED]; and statements from a country
27 conditions expert on falsifying documents to travel outside of Afghanistan. *Id.*

28 36. On May 8, 2025, O.E.O. was subjected to a dental examination to
determine his age. *See* Ex. B, May 21 Memo; *see also* Ex. L, Dental Age Assessment
Report. ORR received the results of the examination from Dr. David R. Senn on May

19, 2025. *See* Ex. L, Dental Age Assessment Report. The examination employed the Demirjian method and claimed that O.E.O. was between the ages of sixteen and twenty-two, with a 77.5% “empirical statistical probability” that O.E.O. is eighteen years old. *Id.* In support of his determination, Dr. Senn cited to studies regarding the following ethnic groups: Japanese juveniles; a “North Texas Hispanic population”; and “American Blacks as Compared with Whites.” Ex. L, Dental Age Assessment Report. None of the studies take into account children from Afghanistan. *See id.*

37. In recent years, the DHS Inspector General, medical professionals, and Dr. David Senn, the very dentist who developed the technology using radiographs to determine the age of children and who provided an assessment of O.E.O., have all criticized dental exams as being “unreliable.” One study found the reliability of the Demirjian method is questionable for some populations, such as French-Canadian and Indian individuals, because it overestimates the age of those individuals.⁶ The Demirjian method is insufficient to “determine biological age with adequate accuracy to remove any legal doubt, especially for individuals close to the age of majority, even with a 2-year margin.”⁷ Health professionals have raised concerns as to the ethics of using the Demirjian method to age re-determine unaccompanied children, given the significant harm their subsequent detention causes the child.⁸

38. Between April 15, 2025 and May 14, 2025, O.E.O.’s family also sent O.E.O.’s ORR caseworker, Erik Ortiz Cruz, four declarations from his siblings and one uncle, and O.E.O.’s sister’s national ID in support of his minority. *See* Fox Decl. ¶ 31; *see also* Ex. Z, Screenshots of Whatsapp Messages to Erik Ortiz; Exs. F, G, I–K

⁶ Sapna Hegde, et al., *The applicability of the original and revised Demirjian standards to age estimations of 5-15 year old Indian children*, 36 J. Forensic Odontostomatol 1, 13 (May 1, 2018),

[https://pmc.ncbi.nlm.nih.gov/articles/PMC11236468/#:~:text=The%20results%20showed%20that%20the,P%20%3D%200.13\)%20in%20boys](https://pmc.ncbi.nlm.nih.gov/articles/PMC11236468/#:~:text=The%20results%20showed%20that%20the,P%20%3D%200.13)%20in%20boys) (last visited June 27, 2025).

⁷ Willmann C, Fernandez De Grado G, Kolb C, Raul JS, Musset AM, Gros CI, Offner D., *Accuracy of Age Estimation Using Three Dental Age Estimation Methods in a Young, Large, and Multiethnic Patient Sample* (Dec. 13, 2023),

<https://pmc.ncbi.nlm.nih.gov/articles/PMC10742978/#sec5-dentistry-11-00288> (last visited June 27, 2025).

⁸ *See* Corkish & Diaz, *It’s Unethical to Use Dental X-Rays to Send Immigrant Children to Adult Detention Facilities*, BU School of Public Health, (Jul 3, 2019),

<https://www.bu.edu/sph/news/articles/2019/its-unethical-to-use-dental-x-rays-to-send-immigrant-children-to-adult-detention-facilities/> (last visited June 27, 2025).

(declarations from three of O.E.O.'s siblings and one of O.E.O.'s uncles, and B.O.'s National ID Card).

39. On May 19, 2025, ORR received a response to their May 2, 2025 request to the AAU, regarding the authentication of O.E.O.'s school records and the statement from his doctor. *See* Ex. B, May 21 Memo. FFS Gast claims that "the AAU responded that the documents cannot be authenticated." *Id.*

40. On May 21, 2025, FFS Gast issued a second Memo of Age Re-Determination. *See* Ex. B, May 21 Memo. FFS Gast claimed to have considered the following pieces of evidence of O.E.O.'s alleged majority:

41. The fraudulent passport and national identification card that O.E.O. used to flee [REDACTED]

- O.E.O.'s statement that he used false documents to travel;
- Two statements from O.E.O.'s mother "confirm[ing] that his date of birth (DOB) is [REDACTED];
- O.E.O.'s Tazkira with his correct date of birth, [REDACTED]
- Medical records (statement from O.E.O.'s doctor)
- School records
- Dental forensic exam

Id.

42. FFS Gast ultimately concludes the following:

Given the totality of evidence – including the passport and national identification card, the finding of digital manipulation on the Tazkira, the inability to authenticate school and medical records provided by [O.E.O.'s] mother, and the dental age assessment indicating a 77.55% probability that [O.E.O.] is 18 years or older – and in accordance with ORR policy, it is determined that the aforementioned individual is 18 years of age or older. As such, [O.E.O.] is no longer eligible for placement in an ORR funded facility for minors.

Id.

43. Of the above seven types of evidence that FFS Gast claimed to have

1 considered, she either inaccurately represented the evidence, and thus improperly
 2 rejected it, or she failed to consider it all together. First, FFS Gast's conclusion gives
 3 no weight to O.E.O.'s and his mother's consistent statements that his date of birth is
 4 [REDACTED] *See id.* Second, as to O.E.O.'s school record, FFS Gast rejects the
 5 evidence because it lacks "attestation from the ministry of education" or "verification
 6 by the ministry of foreign affairs." *Id.* As stated *supra*, the school record has the stamp
 7 of the Afghan Ministry of Education. *See* Ex. D. Third, as to the medical record, FFS
 8 Gast rejects the evidence because it is written on a prescription pad. *See* Ex. E. But
 9 Ms. Gast mischaracterizes it as a medical record when in fact the evidence is a
 10 declaration from his doctor and includes his signature and fingerprint as authorization.
 11 *See id.* Fourth, as to the three identity documents, Ms. Gast misrepresents the
 12 assessment of the AAU. Ms. Gast claims that on February 3, 2025, the AAU
 13 "confirmed that both the passport and national ID appeared genuine and valid, thereby
 14 indicating [O.E.O.] is an adult." *See* Ex. B, May 21 Memo. But the AAU stated that
 15 "it is challenging to fully accept these documents as genuine without having the hard
 16 copies for extra examination" and explicitly said "it is hard to come up with a
 17 conclusion" as to the validity of the documents." Ex. O, February 3, 2025 Email
 Correspondence.

18 44. FFS Gasts made no mention of the following evidence in her May 21
 19 Memo of Age Re-Determination: (1) Declaration from O.E.O.'s Brother, S.O.; (2)
 20 Declaration from O.E.O.'s sister, O.O.; (3) Declaration from O.E.O.'s uncle, G.S.; (4)
 21 Declaration from O.E.O.'s sister, B.O.; (5) B.O.'s National ID Card. *See* Exs. F, G, I–
 22 K (declarations from three of O.E.O.'s siblings and one of O.E.O.'s uncles, and B.O.'s
 23 National ID Card). All four declarations testify that O.E.O. is fifteen years of age and
 24 that his date of birth is [REDACTED]. *See* Exs. F, G, I, J. O.E.O.'s older sister,
 25 B.O., provided her national identity card, which shows that she born on [REDACTED]
 26 [REDACTED], making it impossible for O.E.O. to have been born on [REDACTED]. *See* Ex.
 27 K, B.O.'s National ID Card. ORR received all five of those pieces of evidence, but
 28 FFS Gast considered none of them in her determination. *See* Fox Decl. ¶¶ 18, 31; *see*
also Ex. Z.

1 45. There is also no indication that ORR considered the totality of the
2 circumstances in O.E.O.'s case—i.e., that O.E.O. is [REDACTED]
3 [REDACTED] and obtaining fraudulent documents is common
4 and necessary for children to [REDACTED] See O.E.O. Decl. ¶¶ 3–7;
5 see also Ex. Y, Declaration of S.O., June 10, 2025 (stating that [REDACTED]
6 O.E.O. every few days [REDACTED]); Fox Decl. ¶ 16; Ex. Tab P, May 8, 2025
7 Email Correspondence between Lucibel Gast and Alex Fox (showing evidence from
8 country conditions expert who states that it is “not uncommon for individuals in
9 Afghanistan to alter their age on official documents” when leaving under duress).

10 46. On May 21, 2025, Ms. Fox was notified that O.E.O. had again been age-
11 redetermined as an adult. Fox Decl. ¶ 17. Ms. Fox went to Crittenton Shelter on May
12 22, 2025, to ask that O.E.O. be released on his own recognizance, so that he could go
13 live with his uncle. *Id.* at ¶ 18. ICE agents ignored Ms. Fox's request, and instead
14 handcuffed O.E.O. and drove him to a federal building at 300 N. Los Angeles Street,
15 Los Angeles, California, for processing. O.E.O. Decl. ¶ 19; Fox Decl. ¶ 18. After
16 approximately three hours of ICE processing, Ms. Fox was finally able to speak with
17 O.E.O., but ICE agents prohibited them from speaking privately. Fox Decl. ¶ 19. The
18 ICE agents also denied O.E.O. his medication, failed to give him food or water, and
19 refused to give him his jacket. See O.E.O. Decl. ¶ 19; Fox Decl. ¶ 19. The ICE agents
20 gave O.E.O. a Notice to Appear with a new court date of June 2, 2025, at the Adelanto
21 Immigration Court, despite his removal proceedings having been recently terminated.
22 O.E.O. Decl. ¶ 19; see also Ex. W, Notice to Appear dated May 22, 2025.

23 **III. O.E.O. Was Transferred to an Adult ICE Detention Facility in Arizona**

24 47. On the evening of May 22, 2025, O.E.O. was driven to the Florence
25 Detention Center in Florence, Arizona. O.E.O. Decl. ¶ 19. ICE transported O.E.O. in a
26 van with seven adults, and the journey took a long time because they made many stops
27 between Los Angeles, California and Florence, Arizona. *Id.* ICE agents kept O.E.O. in
28 handcuffs the entire drive, and he was only given one small water bottle the entire ride.
Id.

 48. On May 22, 2025, O.E.O. arrived at the Florence Detention Center, where

1 he spent two nights before being transferred to the Eloy Detention Center on May 24,
2 2025. *Id.* O.E.O. called his attorney and told her that he did not feel safe there as a
3 minor and was not sure he would ever be able to sleep there. Fox Decl. ¶ 22; O.E.O.
4 Decl. ¶ 20 (“I am afraid of the other men in here with me. They are much older than I
5 am.”)

6 49. On June 2, 2025, Ms. Fox sent Deportation Officer Ramirez a demand
7 letter, asking ICE to comply with their obligations to conduct their own review of the
8 evidence of O.E.O.’s minority. Fox Decl. ¶ 24. That same day, ICE informed Ms. Fox
9 that O.E.O. was reprocessed and is now subject to an expedited removal order. *Id.* at ¶
10 25.

11 50. On June 3, 2025, Officer Hoffman called Ms. Fox who told her that she did
12 not know what she was talking about because she had never been to Afghanistan. *Id.* at
13 ¶ 26. The Officer then told her that he knows that O.E.O. is an adult and indicated he
14 would not conduct an inquiry into his age as required by statute. *Id.*

15 51. On June 4, 2025, Ms. Fox sent a demand letter to Deputy Field Office
16 Director Jason Ciliberti, Assistant Field Office Director Brian Ortega, Assistant Field
17 Office Director Karin Kinghorn, Supervising Detention and Deportation Officer Chris
18 Hoffman, and Deputy Chief Counsel at Eloy Matthew Hanson. *See* Fox Decl. ¶ 27; *see*
19 *also* Ex. X, ICE Demand Letter, June 4, 2025. In this letter, Ms. Fox asked that ICE
20 comply with their obligations to conduct their own internal review of the evidence of
21 O.E.O.’s age as well as to notify Health and Human Services within forty-eight hours
22 of the alleged age of the detainee. Ex. X, ICE Demand Letter, June 4, 2025.

23 52. On June 5, 2025, Officer Hoffman replied to Ms. Fox’s second demand
24 letter with the following: “After further review of submitted evidence, we have
25 determined that the subject is an adult.” *Id.* at ¶ 28. That same day, Deportation
26 Officer Ramirez called Ms. Fox from her office with O.E.O. physically present and
27 reviewed information regarding his credible fear interview. *Id.* at ¶ 29. After that
28 meeting, O.E.O. called Ms. Fox and informed her that another officer in that same
office harassed him about his age and told him he was lying about his age. *Id.* at ¶ 30.
This caused O.E.O., significant distress. *Id.*

1 **IV. O.E.O. Has Been Unlawfully Detained in ICE Custody for Forty Days**

2 53. Since May 24, 2025, O.E.O. has been held in overcrowded cells with adults
3 at the Eloy Detention Center. *See* O.E.O. Decl. ¶ 20. The Eloy Detention Center is a
4 private prison located at 1705 East Hanna Road, Eloy, Arizona 85131. It is owned and
5 operated by CoreCivic, formerly the Corrections Corporation of America, under
6 contract with ICE. *See Eloy Detention Center*, CoreCivic,
7 <https://www.corecivic.com/facilities/elay-detention-center> (last visited June 27, 2025)

8 54. The Eloy Detention Center detains individuals for immigration-related
9 purposes, including both men and women. *See* Global Detention Project, Eloy
10 Detention Center, [https://www.globaldetentionproject.org/countries/americas/united-](https://www.globaldetentionproject.org/countries/americas/united-states/detention-centres/564/elay-detention-center-elay-federal-contract-facility)
11 [states/detention-centres/564/elay-detention-center-elay-federal-contract-facility](https://www.globaldetentionproject.org/countries/americas/united-states/detention-centres/564/elay-detention-center-elay-federal-contract-facility) (last
12 visited June 27, 2025). The center has been described as the “‘deadliest immigration
13 detention center in the U.S.,’ with at least 16 reported deaths, including five suicides.”⁹

14 55. U.S. House Representative Yassamin Ansari, who recently visited the Eloy
15 Detention Center, stated that the Eloy detainees complain of a lack of adequate medical
16 care, lack of proper nutrition, and lack of access to adequate drinking water and are
17 sometimes given ice cubes instead of drinking water.¹⁰

18 56. Since being detained, O.E.O. has had limited communication with his
19 family, all of whom are in Afghanistan. O.E.O. Decl. ¶ 20. He has suffered from
20 extreme stress and panic attacks. *Id.* at ¶ 20. The guards have not permitted him to
21 take the medication his doctor prescribed for his anxiety. *Id.*

22 57. On June 17, 2025, another detainee stood up, walked in O.E.O.’s direction,
23 and began yelling and cursing at O.E.O. in English. *Id.* at ¶ 22. This interaction was

24 ⁹ Detention Watch Network & Florence Immigrant & Refugee Rights Project, *Anthology*
25 *of Abuse: A Legacy of Failed Oversight and Death at the Eloy Detention Center*, at 2
26 (2024) available at
27 [https://www.detentionwatchnetwork.org/sites/default/files/reports/Anthology%20of%20](https://www.detentionwatchnetwork.org/sites/default/files/reports/Anthology%20of%20Abuse%20-%20A%20Legacy%20of%20Failed%20Oversight%20and%20Death%20at%20the%20Eloy%20Detention%20Center_.pdf)
28 [Abuse%20-%20A%20Legacy%20of%20Failed%20Oversight%20and%20Death%20at%20the%20Eloy%20Detention%20Center_.pdf](https://www.detentionwatchnetwork.org/sites/default/files/reports/Anthology%20of%20Abuse%20-%20A%20Legacy%20of%20Failed%20Oversight%20and%20Death%20at%20the%20Eloy%20Detention%20Center_.pdf) (last visited June 27, 2025).

¹⁰ Daniel Gonzalez, *Rep. Yassamin Ansari describes ‘sickening’ conditions at Eloy migrant detention center*, AZ Central (May 29, 2025), available at
<https://www.azcentral.com/story/news/politics/immigration/2025/05/29/ansari-calls-conditions-at-elay-detention-center-sickening/83930087007/> (last visited June 27, 2025).

1 entirely unprovoked and has left O.E.O. scared to leave his room because he doesn't
2 believe the guards will protect him if another altercation occurred. *Id.*

3 58. O.E.O. wishes to be released to the least restrictive setting, which is with
4 his uncle, M.O., in Sacramento, California. *See* O.E.O. Decl. ¶ 23; *see also* Ex. H,
5 Declaration of O.E.O.'s Uncle, M.O. M.O. is O.E.O.'s only relative in the United
6 States and they have a close relationship. O.E.O. Decl. ¶ 23. M.O. is able to provide
7 O.E.O. with a home and a support system. *Id.*

8 **LEGAL FRAMEWORK FOR RELIEF SOUGHT**

9 **I. Law and Procedure Governing this Habeas Petition**

10 59. A writ under 28 U.S.C. § 2241 may issue if, among other things, a person
11 "is in custody under or by color of the authority of the United States," or is "in custody
12 in violation of the Constitution or laws or treaties of the United States." 8 U.S.C. §
13 2241(c). A habeas court's role is at its "most extensive in cases of pretrial and
14 noncriminal detention," especially "where there ha[s] been little or no previous judicial
15 review of the cause for detention," as is the case here. *Boumediene v. Bush*, 553 U.S.
16 723, 780 (2008).

17 60. A court "entertaining an application for a writ of habeas corpus shall
18 forthwith award the writ or issue an order directing the respondent to show cause why
19 the writ should not be granted, unless it appears from the application that the applicant
20 or person detained is not entitled thereto." 28 U.S.C. § 2243.

21 61. "The writ, or order to show cause shall be directed to the person having
22 custody of the person detained. It shall be returned within three days unless for good
23 cause additional time, not exceeding twenty days, is allowed." *Id.*

24 62. Once the government files its return, the Court shall set a "hearing, not
25 more than five days after the return unless for good cause additional time is allowed."
26 *Id.* "The court shall summarily hear and determine the facts, and dispose of the matter
27 as law and justice require." *Id.*

28 63. The INA also provides for limited habeas review of the following
determinations made" in expedited removal proceedings: (1) "whether the petitioner is
an alien;" (2) whether the petitioner was ordered removed under such section," and (3)

1 “whether the petitioner . . . is an alien lawfully admitted for permanent residence, has
 2 been admitted as a refugee . . . or has been granted asylum.” *See* 8 U.S.C. § 1252(e)(2).
 3 Unaccompanied children are categorically exempt from expedited removal
 4 proceedings. 8 U.S.C. §§ 1232(a)(2)(B), (a)(3), (a)(5)(D); *see also* Respondent’s
 5 Motion to Exceed the Type-Volume Limitation by 4, 744 Words at 18, *Flores v. Lynch*,
 6 828 F.3d 898 (9th Cir. 2016) (No. 15-56434), 2016 WL 330944, at *18 (“The detention
 7 requirements of the INA governing expedited removal and reinstatement of removal
 8 apply to all adults, including those who arrive with children, and to accompanied
 9 minors. They do not, however, apply to [UCs], since they cannot be subjected to
 10 expedited removal or reinstatement.”)

11 **II. Legal Framework Governing the Care and Custody of Unaccompanied** 12 **Children**

13 **A. The Flores Settlement Agreement**

14 64. The *Flores* Settlement Agreement arose from a lawsuit filed by a group of
 15 immigrant children challenging their detention and seeking to be released to family
 16 members or sponsors within the United States. *See Flores v. Sessions*, 862 F.3d 863,
 17 869 (9th Cir. 2017) (discussing the history of the *Flores* litigation); *see also Flores v.*
 18 *Sessions*, Case No. CV 85-4544-DMG (C.D. Cal., July 9, 2018) (affirming the terms of
 19 the *Flores* Settlement Agreement). Among other things, the Agreement requires: (a)
 20 release without unnecessary delay; (b) release to an adult caregiver, with parents, legal
 21 guardians, and other family members given priority; and (c) placement in the “least
 22 restrictive setting” appropriate to the minor’s needs. *See Stipulated Settlement*
 23 *Agreement, Flores v. Reno*, No. CV 85-4544-RJK(Px), ¶ 11, 14 (C.D. Cal. Jan. 17,
 24 1997), available at <http://www.aila.org/File/Related/14111359b.pdf> (hereinafter
 “*Flores* Settlement Agreement.”)

25 65. The *Flores* Settlement Agreement also authorizes any minor who disagrees
 26 with ORR’s placement or custodial determination to seek review in “any United States
 27 District Court with jurisdiction and venue over the matter to challenge that placement
 28 determination.” *Id.* at ¶ 24B. The standard of review for placement decisions is “de
 novo.” *Id.* at ¶ 24C.

B. Homeland Security Act of 2002

66. In 2002, the Homeland Security Act of 2002 (“HSA”) divided responsibilities for the processing and treatment of unaccompanied children between the HHS’s sub-agency, ORR, and the then-newly created DHS. *See* 6 U.S.C. § 279(a). ORR was assigned certain functions “with respect to the care of unaccompanied . . . children,” including “coordinating and implementing the care and placement” of unaccompanied children in appropriate custody, reunifying unaccompanied children with their parents abroad, maintaining and publishing a list of professionals “qualified to provide guardian and attorney representation services” for unaccompanied children, and collecting statistical information on unaccompanied children. *See* 6 U.S.C. §§ 279(a), (b)(1). The HSA extended to all unaccompanied children the key protections of the *Flores* Settlement Agreement, including its “least restrictive setting” requirement. Pub. L. No. 107-296, § 462, 116 Stat. 2143 (2002).

C. Trafficking Victims Protection Reauthorization Act

67. In 2000, Congress passed the Trafficking Victims Protection Act of 2000 (“TVPA”), which was intended to combat the trafficking of persons. Pub. L. No. 106-368, 114 Stat. 1464 (2000). In 2008, Congress reauthorized the TVPA through the Trafficking Victims Protection Reauthorization Act (“TVPRA”). *See* William Wilberforce Trafficking Victims Protection Reauthorization Act, Pub. L. No. 110-457, 122 Stat. 5044 (2008).

68. In recognition that unaccompanied children are a “particularly vulnerable population” to whom the country “owes a special obligation” to treat “humanely and fairly,” Congress established certain rights for unaccompanied children navigating the immigration process. 154 Cong. Rec. S10866 (daily ed. Dec. 10, 2008) (statement of Sen. Feinstein).

69. For example, in accordance with the *Flores* Settlement Agreement, the TVPRA requires that “an unaccompanied . . . child in the custody of the Secretary of Health and Human Services shall be promptly placed in the least restrictive setting that is in the best interest of the child.” 8 U.S.C. § 1232(c)(2)(A). The Secretary may consider “danger to self, danger to the community, and risk of flight” in making

1 placements. The TVPRA also states that HHS, “in consultation with the Secretary of
2 Homeland Security, shall develop procedures to make a prompt determination of the
3 age” of the unaccompanied child. 8 U.S.C. § 1232(b)(4). “At a minimum, these
4 procedures shall take into account multiple forms of evidence, including the non-
5 exclusive use of radiographs, to determine the age of the unaccompanied” child. *Id.*

6 70. The TVPRA gives USCIS initial jurisdiction over asylum applications filed
7 by unaccompanied children (referred to as “TVPRA asylum”). *See* 8 U.S.C. §
8 1158(b)(3)(C) (amending INA § 208 to vest initial jurisdiction over “any asylum
9 application filed by an unaccompanied [] child” with an asylum officer). Asylum
10 applications for unaccompanied children “shall be governed by regulations which take
11 into account the specialized needs of unaccompanied . . . children and which address
12 both procedural and substantive aspects of handling unaccompanied . . . children’s
cases.” 8 U.S.C. § 1232(d)(8).

13 71. The TVPRA also requires that “any unaccompanied . . . child sought to be
14 removed by the Department of Homeland Security . . . shall be . . . placed in removal
15 proceedings under section 240 of the Immigration and Nationality Act.” *See* 8 U.S.C. §
16 1232(a)(5)(D). The TVPRA expressly prohibits the issuance of an expedited removal
17 order for unaccompanied children. *See* 8 U.S.C. §§ 1232(a)(2)(B), (a)(3), (a)(5)(D);
18 *see also* Respondent’s Motion to Exceed the Type-Volume Limitation by 4, 744 Words
19 at 18, *Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016) (No. 15-56434), 2016 WL 330944,
20 at *18.

21 **D. Immigration and Nationality Act**

22 72. The Immigration and Nationality Act (“INA”) was enacted in 1952, and
23 contains the provisions governing immigration law. Title 8 of the U.S. Code contains
24 the INA.

25 73. Section 235 of the INA, or 8 U.S.C § 1225, governs inspection by
26 immigration officers, the use of expedited removal, and referral for hearings before an
27 immigration judge. The statute provides that expedited removal orders may only be
28 issued to an individual encountered within the interior of the United States if certain
requirements are met, including having been physically present in the United States for

1 less than two years. 8 U.S.C. § 1225(b)(1)(A)(iii)(II). Expedited removal applies only
 2 to adults and cannot be used against unaccompanied children. *See generally* 8 U.S.C. §
 3 1232.

4 74. Section 242 of the INA, or 8 U.S.C. §1252(e)(2)(B) provides that
 5 “[j]udicial review of any determination made under section 1225(b)(1) of this title is
 6 available in habeas corpus proceedings,” but limits the review to three specific
 7 determinations, including “whether the petitioner was ordered removed under such
 8 section.”

9 **E. Prison Rape Elimination Act National Standards**

10 75. Implementing agency guidelines mandate that “an unaccompanied juvenile
 11 will not be detained with an unrelated adult for more than 24 hours.” *See* Juvenile
 12 Protocol Manual § 2.3.2 (2006). Additionally, the Prison Rape Elimination Act
 13 National Standards mandate that, among other protections, youth shall not be detained
 14 in a housing unit “in which the youthful inmate will have sight, sound or physical
 15 contact with any adult inmate through the use of a shared dayroom or other common
 space, shower area, or sleeping quarters.” 28 C.F.R. § 115.14(a).¹¹

16 **III. Regulatory Framework Governing Age Determinations for** 17 **Unaccompanied Children**

18 76. To determine whether an individual is covered by the protections of the
 19 TVPRA, Congress required HHS and DHS to develop policies and procedures to make
 20 age determinations. Accordingly, both ICE and ORR have internal age determination
 21 procedures. *See* ORR Policy Guidance UC Guide § 1.6, Determining the Age of an
 22 Individual without Lawful Immigration Status, [https://acf.gov/orr/policy-](https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.6)
 23 [guidance/unaccompanied-children-program-policy-guide-section-1#1.6](https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.6) (last visited
 24 June 27, 2025) (hereinafter “ORR Policy Guidance”); *see also* ERO Juvenile
 25 Coordinator Handbook §3.1.2,
 26 https://www.ice.gov/doclib/foia/policy/handbookFOJC_Nov2021.pdf (last visited June
 27 30, 2025) (hereinafter “ERO Juvenile Coordinator Handbook”).

28 ¹¹ Youthful inmate means any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail. 28 CFR § 115.5.

1 77. The ORR Policy Guidance acknowledges the challenges in making age
2 custody determinations due to minors traveling with fraudulent documents. *See* ORR
3 Policy Guidance § 1.6. Both ICE’s and ORR’s internal age determination procedures
4 require that “the totality of all available evidence” and the “totality of the
5 circumstances” be considered in an age determination. ORR Policy Guidance §1.6; *see*
6 *also* ERO Juvenile Coordinator Handbook § 3.1.2. “[E]ach case must be evaluated
7 carefully based on the totality of all available evidence, including the statement[s]” of
8 the unaccompanied child, and individuals with “personal knowledge of the
9 unaccompanied . . . child’s age.” ORR Policy Guidance § 1.6; *see also* ERO Juvenile
10 Coordinator Handbook § 3.1.2. The agencies must consider evidence such as official
11 government-issued documents; documentation such as baptismal certificates, school
12 records, and medical records; and “statements from parents or other relatives” or “other
13 persons apprehended with the individual.” *See id.* at § 1.6.2.

14 78. If ORR elects to use imaging technology for medical age assessments, the
15 agencies’ policies require the following: (1) a medical professional experienced in age
16 assessment methods performs the examination; (2) the individual’s ethnic and genetic
17 background is taken into account; (3) dental and skeletal maturity assessments may
18 only be used in conjunction with other evidence; and (4) the “examining doctor must
19 submit a written report indicating the probability percentage that the individual is a
20 minor or an adult.” ORR Policy Guidance, § 1.6.2; *see also* ERO Juvenile Coordinator
21 Handbook § 3.1.2.

22 79. “Medical age assessments should not be used as a sole determining factor
23 but only in concert with other evidence” and “[d]ental maturity assessments using
24 radiographs may be used to determine age, but only in conjunction with other
25 evidence.” ORR Policy Guidance, § 1.6.2. “If the individual’s estimated probability of
26 being 18 or older is 75 percent or greater, *and this evidence has been considered in*
27 *conjunction with the totality of the evidence . . .* ORR may refer the individual to” DHS.
28 *Id.* (emphasis added). ORR guidance also states that “[a]mbiguous, debatable, or
borderline forensic examination results are resolved in favor of finding the individual is
a child.” *Id.*

1 **IV. The Administrative Procedure Act and *Accardi* Doctrine**

2 80. Under the APA, “final agency action for which there is no other adequate
3 remedy in a court [is] subject to judicial review.” 5 U.S.C. § 704. The reviewing court
4 “shall . . . hold unlawful and set aside agency action, findings, and conclusions found to
5 be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
6 law,” or “unsupported by substantial evidence.” 5 U.S.C. § 706(2)(A), (E). The
7 *Accardi* doctrine requires agencies to follow their own rules and policies. *See United*
8 *States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–67 (1954) (holding that BIA
9 must follow its own regulations in its exercise of discretion). *Accardi* challenges may
10 be framed as arbitrary and capricious challenges. *Nat’l Ass’n of Home Builders v.*
11 *Norton*, 340 F.3d 835, 841, 852 (9th Cir. 2003). Where agency action has been
12 “unlawfully withheld or unreasonably delayed,” Section 706(1) of the APA authorizes
13 the Court to compel agency action.

14 **CLAIMS FOR RELIEF**

15 **FIRST CLAIM FOR RELIEF**

16 **Violation of Section 235 of the Trafficking Victims Protection Reauthorization
17 Act, 8 U.S.C. § 1232**

18 81. Petitioner re-alleges and incorporates by reference the paragraphs above.

19 82. ICE and ORR deprived O.E.O. of his TVPRA rights by failing to adhere to
20 the TVPRA. ICE and ORR failed to consider the totality of the circumstances and the
21 evidence establishing that O.E.O. is fifteen years old, and separately failed to place
22 O.E.O. in the least restrictive setting. *See* 8 U.S.C. § 1232(b)(4), (c)(2)(A).

23 83. Respondents have a mandatory duty to complete an age determination in
24 accordance with the TVPRA and promptly place O.E.O. in the least restrictive setting
25 that is in the best interest of O.E.O. 8 U.S.C. § 1232(c)(2)(A).

26 **SECOND CLAIM FOR RELIEF**

27 **Violation of *Flores* Settlement Agreement**

28 84. Petitioner re-alleges and incorporates by reference the paragraphs above.

 85. As an unaccompanied child, O.E.O. is a *Flores* class member and is
authorized to challenge Respondents’ custodial decision in this Court. *Id.* at ¶ 24B, C.

1 86. ICE and ORR have violated the *Flores* Settlement Agreement by failing to
 2 place O.E.O in the least restrictive setting, one appropriate to his needs, which requires
 3 releasing O.E.O. to his uncle without unnecessary delay. *See Flores* Settlement
 4 Agreement ¶¶ 11, 14.

5 87. As an unaccompanied child, O.E.O. is a *Flores* class member and is
 6 authorized to challenge Respondents' custodial decision in this Court. *Id.* at ¶ 24B, C.

7 88. O.E.O.'s continued detention in the Eloy Detention Center violates the
 8 *Flores* Settlement Agreement.

9 **THIRD CLAIM FOR RELIEF**
 10 **Arbitrary and Capricious Under the Administrative Procedure Act, 5 U.S.C. §**
 11 **706(2), (Accardi Violation)**

12 89. Petitioner re-alleges and incorporates by reference the paragraphs above.

13 90. Courts must "hold unlawful and set aside agency action" that is "arbitrary,
 14 capricious, an abuse of discretion, or otherwise not in accordance with the law." Under
 15 the *Accardi* doctrine, an administrative agency is required to adhere to its own internal
 16 operating procedures. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268
 17 (1954). *Accardi* challenges may be framed as arbitrary and capricious challenges.
 18 *Nat'l Ass'n of Home Builders v. Norton*, 340 F.3d 835, 841, 852 (9th Cir. 2003).

19 91. ICE and ORR have deviated from their own regulations by failing to
 20 consider the totality of the evidence establishing O.E.O. is a minor and consequently
 21 placing O.E.O. in adult ICE detention. Respondents relied on questionable dental
 22 exams and fraudulent identification documents and failed to consider O.E.O.'s
 23 statements, statements and declarations from his family members, school records,
 24 medical records, his sister's national identification document, and O.E.O.'s legitimate
 25 national identification document. Respondents have failed to consider the totality of
 26 the evidence as required by ORR and ICE policies.

27 92. O.E.O. has been aggrieved by Respondents' actions in detaining him in
 28 adult ICE custody and refusing to consider his placement with his sponsor.
 Respondents' Age Re-Determination Memo, along with the detention of, and failure to
 release, O.E.O. constitutes final agency action.

93. Respondents' detention of O.E.O. and their failure to release O.E.O. to a fit sponsor is arbitrary, capricious, and not in accordance with the mandates of the TVPRA, the *Flores* Settlement Agreement, and ICE's and ORR's internal policy guides and procedures.

94. ICE's and ORR's actions determine the rights of O.E.O. and have the legal consequence of continued detention in an adult facility. O.E.O. has consequently been deprived of his right to pursue affirmative asylum before USCIS, pursue immigration relief through SIJS, and be placed in the least restrictive setting. Accordingly, O.E.O. is entitled to judicial review of the agencies' actions under 5 U.S.C. § 704.

FOURTH CLAIM FOR RELIEF

Unlawfully Withheld Agency Action Under the Administrative Procedure Act, 5 U.S.C. § 706(1)

95. Petitioner re-alleges and incorporates by reference the paragraphs above.

96. Where agency action has been "unlawfully withheld or unreasonably delayed," Section 706(1) of the APA authorizes the Court to compel agency action.

97. Respondents violate 706(1) by "unlawfully withholding" discrete, nondiscretionary actions that ICE is required to take under 8 U.S.C. §§ 1232(b)(4) and (c)(2). ICE and ORR "*shall* take into account multiple forms of evidence . . . to determine the age of an unaccompanied" child, 8 U.S.C. § 1232(b)(4), and "*shall* . . . promptly place [unaccompanied children] in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(b)(4). Respondents ICE and ORR failed to consider multiple forms of evidence establishing O.E.O. is an unaccompanied minor and have unlawfully detained him in an adult ICE detention facility.

FIFTH CLAIM FOR RELIEF

Violation of the Fifth Amendment: Substantive Due Process

98. Petitioner re-alleges and incorporates by reference the paragraphs above.

99. The Due Process Clause of the Fifth Amendment of the United States Constitution forbids the government from depriving any "person" of liberty "without due process of law." U.S. CONST. AMEND. V. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693

1 (2001). An individual is entitled to a timely and meaningful opportunity to
2 demonstrate they should not be detained.

3 100. The government has two legitimate interests that may be served by civil
4 immigration detention: preventing flight from removal proceedings and protecting the
5 community from danger. When the detention is untethered to any legitimate
6 government interest, the detention is in violation of a petitioner's substantive due
7 process rights. *Zadvydas*, 533 U.S. at 701.

8 101. O.E.O.'s detention is untethered to any legitimate government interest
9 because he is neither a flight risk nor danger to the community, and his detention is
10 undermined by ORR and ICE's violations of the controlling statutes, regulations, and
11 agency policies and procedures governing the care and custody of unaccompanied
12 children. Further, O.E.O.'s removal proceedings were terminated on April 15, 2024,
13 and his TVPRA-asylum application remains pending before USCIS. O.E.O. cannot be
14 subject to expedited removal because he is an unaccompanied minor, and ICE has
15 failed to establish that O.E.O. is a flight risk or a danger to the community. O.E.O.'s
16 detention is therefore unlawful and punitive.

17 102. O.E.O. also has a substantive liberty interest in family integrity and, as a
18 fifteen-year-old child separated from his family, O.E.O. is suffering grave harm due to
19 his unlawful detention in an adult ICE detention facility.

20 103. Respondents' actions, set forth above, have infringed upon O.E.O.'s
21 substantive liberty interest to be free from detention and his liberty interest in family
22 integrity. O.E.O.'s detention is untethered to any legitimate government interest and is
23 thus punitive. For these reasons, Defendants' detention of O.E.O. violates his
24 substantive due process rights.

25 **SIXTH CLAIM FOR RELIEF**

26 **Violation of the Fifth Amendment: Procedural Due Process**

27 104. Petitioner re-alleges and incorporates by reference the paragraphs above.

28 105. The Due Process Clause of the Fifth Amendment provides that the
government shall not "deprive any person of life, liberty, or property without due
process of law." U.S. CONST. AMEND. V.

106. Unaccompanied children are entitled to the protections of the TVPRA and therefore have a protected property interest in their statutory entitlements under the TVPRA. The TVPRA expressly grants robust rights to unaccompanied children and directs DHS and HHS to establish procedures to provide and protect those rights.

107. The TVPRA, ORR policy, and ICE policy all expressly provide unaccompanied children with (1) the right to prompt placement in the least restrictive setting; (2) the right to age determination procedures that take into account multiple forms of evidence; and (3) the right to have USCIS exercise initial jurisdiction over the child's TVPRA-asylum applications.

108. ICE and ORR deprived O.E.O. of his procedural due process rights by failing to follow the TVPRA, the Flores Settlement Agreement, and their own internal agency policies and procedures governing age determinations for unaccompanied children. ICE and ORR failed to consider the totality of the evidence establishing that O.E.O. is fifteen years old and thus also failed to place O.E.O. in the least restrictive setting.

109. Further, as he is an unaccompanied child, USCIS has initial jurisdiction over O.E.O.'s asylum application which was received by USCIS. By unlawfully detaining O.E.O., thereby forcing him to miss his biometrics appointment, ICE has infringed on O.E.O.'s ability to proceed with his asylum application before USCIS.

SEVENTH CLAIM FOR RELIEF
8 U.S.C. §1252(e)(2)(B), Lack of Factual Basis for Expedited Removal as Required by 8 U.S.C. § 1225(b)(1)(A)(iii)(II)

110. Petitioner re-alleges and incorporates by reference the paragraphs above.

111. Expedited removal orders may only be issued to an individual who is encountered within the interior of the United States away from an international border if the individual has been physically present in the United States for less than two years. 8 U.S.C. § 1225(b)(1)(A)(iii)(II). Expedited removal orders issued without a factual basis for the determination are invalid. *See Woodby v. INS*, 385 U.S. 276, 285–86 (1966) (finding that a deportation order cannot be entered without “clear, unequivocal, and convincing evidence that the facts alleged as grounds for deportation

1 are true.”)

2 112. Judicial review of expedited removal orders issued under 8 U.S.C. §
3 1225(b)(1)(A)(iii)(II) in habeas corpus proceedings are limited to determinations of the
4 following: (1) “whether the petitioner is [a noncitizen]; (2) whether the petitioner was
5 ordered removed under such section”; and (3) “whether the petitioner can prove by a
6 preponderance of the evidence that the petitioner is a [noncitizen] lawfully admitted for
7 permanent residence, has been admitted as a refugee under section 1157 of this title, or
8 has been granted asylum under section 1158 of this title, such status not having been
9 terminated, and is entitled to such further inquiry as prescribed by the Attorney General
10 pursuant to section 1225(b)(1)(C) of this title.” 8 U.S.C. § 1252(e)(2)(B).

11 113. The TVPRA expressly prohibits the issuance of an expedited removal order
12 to unaccompanied children. *See* 8 U.S.C. §§ 1232(a)(2)(B), (a)(3), (a)(5)(D); *see also*
13 Respondent’s Motion to Exceed the Type-Volume Limitation by 4, 744 Words at 18,
14 *Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016) (No. 15-56434), 2016 WL 330944, at
*18.

15 114. O.E.O. is an unaccompanied child, therefore the detention requirements of
16 the INA governing expedited removal do not apply to him. *See* 8 U.S.C. §§
17 1232(a)(2)(B), (a)(3), (a)(5)(D). The expedited removal order issued by Defendants is
18 invalid because there is no factual basis under which O.E.O., an unaccompanied minor,
19 could be subjected to expedited removal.

20 EIGHTH CLAIM FOR RELIEF

21 Violation of the Fifth Amendment: Procedural Due Process for Expedited 22 Removal Order

23 115. Petitioner re-alleges and incorporates by reference the paragraphs above.

24 116. The Due Process Clause of the Fifth Amendment of the United States
25 Constitution forbids the government from depriving any “person” of liberty “without
26 due process of law.” U.S. CONST. AMEND. V.

27 117. Due process applies to individuals present within the interior of the United
28 States who are subjected to the expedited removal process.

118. Unaccompanied children also have a separate and distinct fundamental

1 liberty interest in their continued presence in the United States and in not being
2 removed without due process.

3 119. O.E.O. is entitled to an adequate and meaningful process to defend himself
4 during the expedited removal process, which includes challenging the use of expedited
5 removal against him, exercising his right to representation by an attorney pursuant to 5
6 U.S.C. § 555(b) and 8 C.F.R. § 292.6(b), and the right to be afforded sufficient time to
7 gather and present evidence in his defense, including evidence that O.E.O. is an
8 unaccompanied minor and therefore is not subject to expedited removal.

9 **NINTH CLAIM FOR RELIEF**

10 **Violation of the Prison Rape Elimination Act 28 § C.F.R. 115.14(a)**

11 120. Petitioner re-alleges and incorporates by reference the paragraphs above.

12 121. The Prison Rape Elimination Act (“PREA”) National Standards mandate
13 that youth shall not be detained in a housing unit “in which the youthful inmate will
14 have sight, sound or physical contact with any adult inmate through the use of a shared
15 dayroom or other common space, shower area, or sleeping quarters.” 28 C.F.R. §
16 115.14(a).

17 122. Accordingly, because Respondents have detained O.E.O., an
18 unaccompanied child who is fifteen years old, in an adult detention center, they have
19 violated the PREA.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Petitioner respectfully requests that this Court:

- 22 1) Assume jurisdiction over this matter;
- 23 2) Declare that ICE and ORR’s actions were arbitrary, capricious, and not in
24 accordance with the law under the APA because ICE and ORR failed to follow
25 their internal policies and procedures in re-considering O.E.O.’s age;
- 26 3) Declare that ICE and ORR unlawfully withheld agency action they were
27 required to take under the APA by failing to follow their statutory obligations
28 under the TVRPA and their internal policies and procedures with respect to age
determinations;
- 4) Declare that ICE’s decision to detain Petitioner, an unaccompanied minor, in

adult detention was unlawful under the TVPRA and the *Flores* Settlement Agreement because it did not consider the least restrictive setting or the minor's best interest;

- 5) Declare Respondents' detention of Petitioner in adult ICE custody a violation of the Fifth Amendment of the United States Constitution;
- 6) Enjoin Respondents from applying the age determinations as the basis for the expedited removal, custody determinations, or other immigration relief made by the agency until ORR makes an age determination in accordance with 8 U.S.C. 1232(b)(4) and ORR's Policy Guidelines;
- 7) Order ORR to complete an age determination in compliance with 8 U.S.C. 1232(b)(4) and its Policy Guidelines within forty-eight hours of the date of this Order, in compliance with 8 U.S.C. §1232(a)(4);
- 8) Order O.E.O.'s transfer to ORR custody within the next seventy-two hours, in compliance with 8 U.S.C 1232(b)(3), and that ORR release him to his sponsor immediately and, in any case, no later than 3 days after his transfer to ORR custody, in compliance with 8 U.S.C. § 1232(c)(2)(B), which requires prompt release to the least restrictive setting;
- 9) Enjoin Respondents from causing Petitioner any greater harm during the pendency of this litigation, such as by transferring him anywhere outside of the jurisdiction of the District of Arizona or the Central District of California, away from his counsel;
- 10) Grant the petition and issue a writ of habeas corpus commanding Petitioner's immediate release from Respondent ICE's custody to Petitioner's previous ORR facility, and then to his sponsor because his detention and the process by which the expedited removal order was issued violated the Fifth Amendment of the United States Constitution;
- 11) Award Petitioner reasonable attorneys' fees, costs, and other disbursements in this action permitted under the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law; and

1 12) Grant such further relief as the Court deems just and proper.
2
3

4 DATED: June 27, 2025

Respectfully submitted
By: /s/ Carson Adrianna Scott
Carson Adrianna Scott
Immigrant Defenders Law Center
Pro Bono Attorney for Petitioner
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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. As his attorney, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED: June 27, 2025

Respectfully submitted
By: /s/ Carson Adrianna Scott
Carson Adrianna Scott
Immigrant Defenders Law Center
Pro Bono Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2025, the attached document was electronically transmitted to the Clerk of the Court using the CM/ECF System which will send notification of such filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

I hereby certify that on June 30, 2025, I served the attached document by United States Postal Service First Class Mail on the following, who are not registered participants of the CM/ECF System:

FRED FIGUEROA

Warden

Eloy Detention Center

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Eloy, AZ 85131

JOHN E. CANTU

ICE/ERO Field Office Director

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TODD M. LYONS

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20 Massachusetts Ave., NW

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ROBIN DUNN MARCOS

Director of the Office of Refugee Resettlement

330 C ST SW, Room 5123

Washington, DC 20201

1 ANDREW GRADISON,
2 Assistant Secretary for the Administration of Children and Families
3 330 C Street, S.W.
4 Washington, D.C. 20201

5 ROBERT F. KENNEDY, JR.
6 Secretary of Health and Human Services
7 200 Independence Avenue, S.W.
8 Washington, DC 20201

9 LUCIBEL GAST
10 Federal Field Specialist
11 Office of Refugee Resettlement
12 Mary E. Switzer Building
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14 Washington, DC 20201

15 KRISTI NOEM
16 Secretary of the U.S. Department of Homeland Security
17 2707 Martin Luther King Jr. Ave., SE
18 Washington, D.C. 20528-0485

19 Upon receipt of the Notice of Electronic Filing, a copy of the attached document and
20 Notice of Electronic Filing will be hand delivered to the Honorable *INSERT
21 **JUDGE'S NAME***

22 DATED: June 27, 2025

Respectfully submitted
By: /s/ Carson Adrianna Scott
Carson Adrianna Scott
Immigrant Defenders Law Center
Pro Bono Attorney for Petitioner