Alvaro M. Huerta (CA SBN 274787)
ahuerta@immdef.org
Carson Adrianna Scott (CA SBN 337102)
cscott@immdef.org
Alison Steffel (CA SBN 346370)
asteffel@immdef.org
Alex Fox (CA RLAA 805271; NY SBN 6048003)
afox@immdef.org
Immigrant Defenders Law Center
634 S. Spring St., 10th Fl.
Los Angeles, CA 90014
Telephone: (213) 634-7601
Facsimile: (213) 282-3133

Pro Bono Attorneys for Petitioner

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

O.E.O.,

Petitioner,

vs.

Fred Figueroa, et al.,

Respondents.

Case No. 2:25-cv-02283-DWL-MTM

REPLY IN SUPPORT OF PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION

Date: 07/09/2025
Time: 2:00 pm
Judge: Hon. Dominic W. Lanza
Date Action Filed: June 30, 2025

TABLE OF CONTENTS

INTRODUCTION

Petitioner O.E.O. is a fifteen-year-old child from Afghanistan currently detained at Eloy Detention Center ("Eloy"), located in Eloy, Arizona. ORR and ICE's basis for placing O.E.O. in adult detention is an unsubstantiated assertion that the fraudulent documents O.E.O. used to escape the Taliban are authentic and that a dental assessment found a likelihood that this fifteen-year-old child is actually an adult. Respondents' transfer of O.E.O. to Eloy, despite the totality of the evidence showing that he is a minor, is illegal and warrants immediate relief.[1]

ARGUMENT

I. O.E.O. Seeks to Preserve the Status Quo Pending a Hearing on His Complaint and Petition for a Writ of Habeas Corpus

A temporary restraining order can be either mandatory, which "orders a responsible party to take action," or prohibitory, which "preserves the status quo pending a determination of the action on the merits." *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1060-61 (9th Cir. 2014) (quoting *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878–79 (9th Cir.2009)) (cleaned up). "The 'status quo' refers to the legally relevant relationship between the parties before the controversy

[1] Petitioner provided US Attorney Courchaine with courtesy copies of the Complaint and Petition for Writ of Habeas Corpus and the Temporary Restraining Order on June 30, 2025, via email prior to filing both documents and accompanying exhibits with the Court. Dkt. 1, 2. On July 1, 2025, counsel emailed Assistant U.S. Attorney Katherine Branch and Attorney Lon Leavitt as-filed copies of the Complaint and Petition for Writ of Habeas Corpus and the Motion for a Temporary Restraining Order. Petitioner's counsel physically mailed service on July 3, 2025, via United States Postal Service ("USPS") using certified mail. Opposing counsel entered an appearance on the case at 4:56 PST on July 7, 2025, Dkt. 28, shortly before filing their opposition to the instant motion, Dkt. 29. Upon confirming that USPS tracking indicated the package was out for delivery the morning of July 7, 2025, and available for pick-up the evening of July 7, 2025, Petitioner's counsel sent the unredacted Exhibits and Ms. Fox's and O.E.O.'s Declarations via email the morning of July 8, 2025. Counsel also sent opposing counsel the address to which service was mailed and the tracking number to confirm that the documents had been sent to the correct address.

arose." *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1060-61 (9th Cir. 2014); *see also Mendez v. U.S. Imm. and Customs Enforcement*, 2023 WL 2604585 at *3 (N.D. Cal. Mar. 15, 2023) (citing *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000). ("'Status quo' means the last uncontested status that preceded the pending controversy.").

Here, O.E.O. asks this court to issue a prohibitory injunction which returns O.E.O. and Respondents to their "legally relevant relationship" before the controversy—i.e., a relationship in which O.E.O. was still properly designated as an unaccompanied minor and was in ORR custody. *See Arizona Dream Act Coalition*, 757 F.3d at 1060-61. O.E.O.'s requested relief specifically asks this Court to prohibit Respondents from applying the ICE and ORR age redeterminations to O.E.O. until the agencies conduct age redeterminations in compliance with their obligations under 8 U.S.C. § 1232(b)(4). District courts have consistently found these requests to be prohibitory. *See Hernandez v. Sessions,* 872 F.3d 976, 999 (9th Cir. 2017) (discussing when a preliminary injunction ordering a bond hearing before an IJ is prohibitory, rather than mandatory, in nature).

Further, even if O.E.O.'s TRO could be characterized as mandatory, O.E.O. has satisfied the heightened burden because he has shown "extreme or very serious damage will result' that is not 'capable of compensation in damages,' and the merits of the case are not 'doubtful.'" *Hernandez*, 872 F.3d at 999; *see also* Dkt. 2 at 28–30 (describing irreparable harm suffered by O.E.O. because of his unlawful detention).

Finally, at this juncture, O.E.O. seeks only preliminary relief from the Court to return him to ORR custody and to prevent irreparable harm as a result of the execution of an unlawful expedited removal based on a faulty age redetermination. As argued in his Motion for a Temporary Restraining Order and below, O.E.O. meets the standard for a

preliminary injunction while the Court adjudicates the merits of his Complaint and Petition.

II. O.E.O.'s Case Is Distinct from the Petitioner's Challenge in *Imon*

O.E.O.'s case is distinct from *Imon v. Keeton*, 2020 WL 4284378 (D. Ariz. 2020), for two main reasons. First, O.E.O. filed a Complaint *and* a Petition for Writ of Habeas Corpus. *See generally* Dkt. 1, Complaint and Petition for Writ of Habeas Corpus. The relief sought through the issuance of a writ is specifically requested as to Respondent ICE. *See* Dkt. 1 at 30 ("Grant the petition and issue a writ of habeas corpus commanding Petitioner's immediate release from Respondent ICE's custody…"). But O.E.O. also concurrently seeks declaratory and injunctive relief against ORR under the Administrative Procedure Act §§ 706(1) – (2). *See* Dkt. 24 ¶¶ 89–97, Prayer for Relief at pg. 29.

Second, there are several factual differences between *Imon* and O.E.O.'s cases. In *Imon*, ICE officials had considered Imon's "age at several different points and for several different reasons," including before an immigration judge. *Imon*, 2020 WL 4284378 at *9. The immigration judge in Imon's case determined Imon lacked credibility in part because he paused and appeared to be calculating his age during testimony. *Id.* at *3. In contrast, there have been no adverse credibility findings against O.E.O. In fact, O.E.O. has been consistent about his age and his date of birth. In O.E.O.'s case, as argued *infra*, ICE claimed to have conducted an age determination once, and simply stated: "After further review of submitted evidence, we have determined that the subject is an adult." Dkt. 11, Fox Decl. at ¶ 28. ICE's "determination" makes no mention of what evidence it considered or how it came to its conclusion. O.E.O. has also consistently stated his date of birth without hesitation, and has provided extensive evidence corroborating his minority. *See generally* Dkt. 12, O.E.O. Decl.; *see also* Dkt. 10, Tab B, May 21 Memo.

In short, ICE had all the evidence relevant to O.E.O.'s minority, but it either failed to conduct an age determination, or its age determination is deficient for the reasons argued in the TRO. *See* Dkt. 2, Motion for Temporary Restraining Order ("TRO") at 16–17.

Further, Imon had also reached the age of majority while in the custody of ICE. O.E.O., on the other hand is fifteen years old and will not reach the age of majority for another three years. If O.E.O. prevails on his claims, there is no factual basis under which ICE can continue to detain O.E.O., nor under which ICE can subject O.E.O. to an expedited removal order. *See* 8 U.S.C. §§ 1232(a)(2)(B), (a)(3), (a)(5)(D). Given O.E.O will continue to be a minor for another three years, the deprivation of his liberty here is particularly serious.

III. O.E.O. Is Likely to Succeed on the Merits

Respondents' reply focuses solely on ORR's violations and wishes to dispense of O.E.O.'s motion for a temporary restraining order simply because ORR is one of many Respondents to O.E.O.'s Complaint and Petition for Writ of Habeas Corpus. O.E.O. rightfully identifies both ORR and ICE as Respondents in this action because he seeks relief from both agencies' actions, including rescission of the ORR May 21 Age Re-Determination Memo. *See* Dkt. 2, Motion for Temporary Restraining Order at 32. Regardless, Respondents fail to make any arguments that ICE, the current custodian of O.E.O., followed its obligations under the TVPRA and its own internal policies and procedures in conducting an age determination. *See* Dkt. 1, Complaint and Petition for Writ of Habeas Corpus at ¶¶ 49–52; *see also* Dkt. 2 at 21 ("ICE also acted arbitrary and capriciously by failing to give any reason for its determination that O.E.O. was an adult and acted contrary to the law by detaining O.E.O. in an adult facility."). For the reasons argued below, O.E.O. is likely to succeed on the merits of his claims as to both ICE and ORR.

A. Respondents Have Failed to Show How Their Age Re-Determinations Are Compliant with the TVPRA or Their Own Internal Policies and Procedures.

O.E.O. is likely to succeed on the merits of his claims because he has shown ICE and ORR have failed to follow their obligations under the TVPRA and their own internal policies governing age determinations.

ICE: Respondents' sole response to O.E.O.'s argument that ICE failed to follow its legal obligations in age determining O.E.O. is the following: "DHS has also reviewed Petitioner's proffered evidence and determined that he is an adult." Dkt. 29, Response to Motion for Temporary Restraining Order and Preliminary Injunction at 10. At minimum, this response shows that ICE's actions are arbitrary and capricious. Where an agency fails to give any "explanation for its decisions that runs counter to the evidence before the agency," the agency has acted arbitrarily and capriciously." *Immigrant Defs. L. Ctr. v. U.S. Dep't of Homeland Sec.*, No. CV 21-0395 FMO (RAOX), 2025 WL 1191572 at *14 (C.D. Cal. Mar. 14, 2025) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotations omitted).

Ms. Alex Fox twice asked ICE to conduct an age determination in compliance with its obligations under 8 U.S.C. § 1232(b)(4) and the ERO Juvenile Coordinator Handbook §3.1.2. ICE's first response on June 3, 2025, was that O.E.O. was an adult and that they "*would not* conduct an inquiry into his age as required by statute." Dkt. 1 at ¶ 50 (emphasis added). ICE's second response, on June 5, 2025, was an email that stated only the following: "After further review of submitted evidence, we have determined that the subject is an adult." Dkt. 11, Fox Decl. at ¶ 28. This response gives no explanation for its decision, nor does it explain what evidence it considered and why it determined that O.E.O. is an adult. ICE also gives no explanation as to why suddenly, it has changed its opinion concerning O.E.O.'s passport and national identity card, given DHS was

aware of the identifications when O.E.O. was apprehended. *See I.J. v. Keeton*, No. CV-19-01904-SMB, n. 8 (D. Ariz. 2019) (stating that DHS's "shift in opinion" as to Petitioner's identity documents "raises serious questions concerning the probative value of that evidence to determine his age.); *see also* ORR Policy Guidance, § 1.6 (listing "[c]ontradictory or fadulent identity documentation" as a common challenge to determining an individual's age). Indeed, courts have consistently found ICE's actions to be arbitrary and capricious where they fail to follow their obligations under the TVPRA, and fail to give a reasoned explanation for its decision. *See Ramirez v. U.S. Immigr. & Customs Enf't*, 471 F. Supp. 3d 88, 185 (D.D.C. 2020). "The touchstone of arbitrary-and-capricious review is reasoned decisionmaking." *Id.* at 98. ICE's single sentence response to a matter as serious as the unlawful detention of a minor simply cannot be upheld as "reasoned decisionmaking."

Further, absent any reasoned explanation for its decision, it is not unreasonable to conclude that ICE has failed to conduct a proper age redetermination and has instead based its decision on ORR's faulty age redetermination. ICE's decision to detain O.E.O. in an adult ICE facility based on an invalid age determination issued by ORR, and its failure to conduct its own age determination compliant with 8 U.S.C. § 1232(b)(4) and the ERO Juvenile Coordinator Handbook §3.1.2 is proof that ICE "unlawfully withheld" agency action it is required to take under the APA. *See* Dkt. 2 at 16–17; *see also* 5 U.S.C. § 706(1).

ORR: O.E.O. brings claims against ORR, not because it is currently in its custody, but because ORR has unlawfully deprived O.E.O. of its statutory entitlements under the TVPRA, and serious legal consequences have flowed to O.E.O. as a result of ORR's unlawful behavior. In other words, O.E.O. seeks declaratory and injunctive relief that finds ORR failed to follow its age re-determination obligations, which would restore

O.E.O.'s proper designation as an unaccompanied child. *See R.R. v. Orozco*, 2020 WL 3542333 at *8 (finding that restoring unaccompanied child designation also restores other statutory entitlements under the TVPRA, including the ability to seek asylum before U.S. Citizenship and Immigration Services).

As to its defense of ORR's May 21 Memo, Respondents' arguments simply double down on ORR's stated reasoning for determining O.E.O. is an adult. Respondents do not refute that ORR's May 21 Memo is deficient in the following four ways: (1) it fails to consider five pieces of evidence in support of his minority; (2) it fails to consider the totality of O.E.O.'s circumstances and thus improperly rejects O.E.O.'s school records and doctor's statement; (3) it fails to consider the totality of the circumstances or the evidence with respect to O.E.O.'s three forms of national identity and the statements of the Afghan Affairs Unit; and (4) its relies on a dental examination above all other evidence. *See* Dkt. 2 at 11–15. O.E.O. does not just "disagree with the results" of ORR's May 21 Memo. Dkt. 29 at 10. O.E.O. has shown ORR's Memo violates the TVPRA and the ORR Policy Guidance § 1.6.2 because it fails to consider the totality of the circumstances and evidence of O.E.O.'s minority. This too is clearly arbitrary and capricious, and agency action unlawfully withheld. *Immigrant Defs. L. Ctr. v. U.S. Dep't of Homeland Sec.*, 2025 WL 1191572 at 14.

In summary, O.E.O. is likely to succeed on the merits of his claim because he has shown that ICE and ORR failed to follow their obligations under the TVPRA, the ERO Juvenile Coordinator Handbook §3.1.2, and the ORR Policy Guidance UC Guide § 1.6. ICE and ORR's violations have led to the unlawful detention of O.E.O., a fifteen-year-old, in an adult detention facility, and have deprived him of other statutory rights under the TVPRA.

B. Respondents Have Failed to Provide a Factual Basis Under Which O.E.O. May be Subject to Mandatory Detention

Given that, as argued above, Respondents have failed to establish O.E.O. is an adult, Respondents have also failed to provide a factual basis under which they can subject O.E.O. to an expedited removal order. The TVPRA expressly prohibits the use of expedited removal on an unaccompanied child. *See* 8 U.S.C. §§ 1232(a)(2)(B), (a)(3), (a)(5)(D). ORR's May 21 Memo cannot be used as a factual basis to establish his minority because ORR's memo did not consider the totality of the circumstances or evidence establishing O.E.O.'s minority. ORR's memo is thus invalid. As for ICE, the agency failed to conduct an age determination altogether. Its single line statement that it has "determined that he is an adult" is simply insufficient to refute that O.E.O. is not a minor. *See supra* at II.A. Until ORR and ICE conduct age determinations in compliance with the TVPRA and their internal policies and procedures, there is no factual basis under which Respondents can subject O.E.O. to expedited removal. *See* 8 U.S.C. §§ 1232(a)(2)(B), (a)(3), (a)(5)(D), (b)(4). 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 are true."); *see also* 8 U.S.C. §1252(e)(2)(B). This Court should thus find that O.E.O. is likely to succeed in his claim that he "was [not] ordered removed under" 8 U.S.C. §1252(e)(2)(B).

IV. O.E.O. Is Actively Suffering Irreparable Harm

Respondents do not meaningfully engage with the fact that O.E.O. is suffering irreparable harm every day that he is prevented from being considered for "placement in the least restrictive setting available." 8 U.S.C. § 1232(c)(2)(A). "Respondents do not—and indeed cannot—maintain an argument that detaining a minor in an adult facility, even for one day, does not constitute harm." *L.B. v. Keeton, No.* CV1803435PHXJJTMHB,

2018 WL 11447076, at *7 (D. Ariz. Oct. 26, 2018). O.E.O., a fifteen-year-old child, has been unlawfully detained in Eloy, Arizona, separated from his attorneys and family for 48 days. Respondents have placed this fifteen-year-old child in "the deadliest immigration detention center in the U.S.," causing him extreme stress and anxiety, and in that detention center he is denied access to medication to manage those symptoms. *See* Dkt. 2 at 28.

Respondents frame Petitioner's irreparable harm as solely "imminent risk of removal" while simultaneously recognizing that "removal is a serious burden for many [noncitizens]." Dkt. 29 at 11, *citing Nken v. Holder*, 556 U.S. 418, 435(2009). However, O.E.O. has shown "reason[s] specific" to his case, "as opposed to a reason that would apply equally well to all [noncitizens] and all cases," that removal would cause him irreparable harm. *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011). Specific to O.E.O.'s case, this Court must consider the imminent risk of removal to a fifteen-year-old child to Afghanistan, the country from which he fled persecution by the Taliban, who will subject him to severe harm and likely death if he is returned. *See id.* at 969. (consideration of physical danger if individual is returned to their home country should be part of the irreparable harm inquiry). Additionally, Respondents fail to acknowledge that O.E.O.'s detention is preventing him from continuing to pursue relief under the TVPRA, which is currently pending before USCIS, and which is delayed because O.E.O. was unable to attend his biometrics appointment while in detention. Fox Decl. at 10; *see R.R. Orozco* 2020 WL 3542333 at 9 (finding that an unaccompanied child suffers irreparable harm where Respondents' age determination did not comply with agency policy and thus prevents him from accessing asylum before USCIS and pursuing SIJS).

V. The Balance of the Equities and Public Interest Favor O.E.O.

Where the government is the opposing party, as here, the public interest and balance of equities factors merge. *Nken v. Holder* at 418, 435. Public interest favors the correct application of federal law. *Valle del Sol, Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013); *Small v. Avanti Health Sys., LLC*, 661 F.3d 1180, 1197 (9th Cir. 2011); *N.D. v. Haw. Dep't of Educ.*, 600 F.3d 1104, 1113 (9th Cir. 2010) ("[I]t is obvious that compliance with the law is in the public interest."). Because Petitioner has met his burden to establish a strong likelihood of success on the merits of his claim that Respondents have violated the TVPRA, the *Flores* Settlement agreement, the APA, and the U.S. Constitution, the public interest and balance of equities weigh in his favor. *L.B. v. Keeton*, No. CV1803435PHXJJTMHB, 2018 WL 11447076 (D. Ariz. Oct. 26, 2018) (public interest and balance of equities in weighed in favor of petitioner).

VI. The Court Should Not Require Bond

Courts have broad discretion in determining whether to require bond under Federal Rule of Civil Procedure 65(c). *Walczak v. EPL Prolong, Inc.,* 198 F.3d 725, 733 (9th Cir. 1999). And a district court may "dispense with the security requirement" entirely, or "request mere nominal security," if "requiring security would effectively deny access to judicial review." *Cal. Ex re.l. Van De Kamp v. Tahoe Reg'l Planning Agency, 766 F.2d 1319, 1325 (9th Cir. 1985); see also Nat'l Council of Nonprofits,* The Ninth Circuit has "recognized that Rule 65(c) invests the district court with discretion as to the amount of security required, if any." *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003) (internal quotation marks and citation omitted). "The district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct." *Id.* Here, there is "no likelihood of resulting harm to Respondents" in granting relief without requiring bond, and it is therefore "appropriate to issue the TRO without requiring security." *L.B. v. Keeton*, No.

CV1803435PHXJJTMHB, 2018 WL 11447076, at 7 (D. Ariz. Oct. 26, 2018). Respondents have not alleged, nor could they plausibly substantiate an argument that they would suffer harm without bond.

In the alternative, should this Court decide that bond is required, it should exercise its discretion to require a minimal amount of bond. Gorbach v. Reno, 219 F.3d 1087, 1092 (9th Cir.2000) (the bond amount may be zero if there is no evidence the party will suffer damages from the injunction. *Gorbach v. Reno,* 219 F.3d 1087, 1092 (9th Cir. 2000); *see also Connecticut Gen. Life Ins. Co. v. New Images of Beverly Hills,* 321 F.3d 878, 882 (9th Cir. 2003). A requirement of bond anything above the minimum would be an immense burden on O.E.O., a fifteen-year-old boy with no income who is fleeing persecution.

VII. Appointment of a Guardian ad Litem Is Required in this Case Pursuant to Fed. R. Civ. P. 17(c)

A guardian ad litem is required under Fed. R. Civ. P. 17(c) because Petitioner is a minor. Petitioner does not intend to tax Respondents for the costs and fees of the motion for appointment of guardian ad litem.

CONCLUSION

For the foregoing reasons this Court should grant Petitioner's motion for a temporary restraining order.

Dated: July 8, 2025

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