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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

O.E.O.,
Petitioner,

vs.

Fred Figueroa, et al.,
Respondents.

Case No. CV-25-02283-PHX-DWL
(MTM)

**PETITIONER'S NOTICE OF
MOTION AND MOTION FOR
PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Date: TBD
Time: TBD
Dept: TBD
Judge: Hon. Dominic W. Lanza
Date Action Filed: June 30, 2025

NOTICE OF MOTION AND MOTION FOR A PRELIMINARY INJUNCTION

PLEASE TAKE NOTICE as soon as it may be heard in the United States District Court for the District of Arizona, 401 Washington St. #10, Phoenix, Arizona, that Petitioner O.E.O., will, and hereby does, move this Court for a preliminary injunction pursuant to Federal Rule of Civil Procedure 65(a).

O.E.O. is a sixteen-year-old unaccompanied child whom Respondents unlawfully classified as an adult and consequently unlawfully detained for seven months at the infamous Eloy Detention Center in Arizona. On February 12, 2026, Respondents reclassified O.E.O. as an unaccompanied child but now are refusing to promptly release O.E.O. to his sponsor. Respondents are violating their obligations under the Trafficking Victims Protection Reauthorization Act (“TVPRA”), which requires them to “promptly place [unaccompanied children] in the least restrictive setting that is in the best interest of the child,” and allow O.E.O. to seek affirmative forms of relief under the TVPRA. 8 U.S.C. § 1232(c)(2)(A); (d)(2), (d)(8). Accordingly, Petitioner moves this Court to:

1. Order O.E.O.’s immediate release to his sponsor, M.O.;
2. Order that, upon release, Respondents will not rearrest O.E.O. until he is afforded a hearing before a neutral decisionmaker, as required by the Due Process Clause of the Fifth Amendment, to determine whether re-detention would be justified;
3. Enjoin Respondent from continuing to apply the continuing to apply the May 21 Memo;
4. Enjoin Respondents from causing O.E.O. any greater harm during the pendency of this litigation, such as by transferring him anywhere other than to an ORR shelter in California if he is not immediately released to his sponsor.

1 The motion is based upon this notice of motion; the memorandum of points and
2 authorities in support thereof that follows; the proposed order filed concurrently herewith;
3 the pleadings, records, and papers on file in this action; oral argument of counsel; and any
4 other matters properly before the Court.
5

6 Dated: April 24, 2026

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

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INTRODUCTION

Petitioner O.E.O. is a sixteen-year-old unaccompanied child from Afghanistan currently detained in custody of the Office of Refugee Resettlement (“ORR”) in El Paso, Texas. On May 21, 2025, Respondents unlawfully age re-determined O.E.O. as an adult and subjected him to a grueling seven months at the Eloy Detention Center, where he spent his sixteenth birthday. *See* Dkt. 87. On January 1, 2026, after six months of litigating, O.E.O. was finally returned to ORR custody, but now has no hope of reunification with his sponsor and uncle, M.O. *See* Fox Decl. at ¶15. Since the last status report filed with this Court, ORR has made inconsistent representations and shifted the requirements allegedly needed for O.E.O. to be released almost daily. *Id.* at ¶¶6–13; *see also* Scott Decl. ¶¶4–7. Absent immediate intervention by this Court, O.E.O. will remain detained in ORR custody under an indefinite “pending” posture, without any specified timeline for reunification with his uncle. After a total of ***seventeen months*** in government detention, O.E.O. returns to this Court seeking a preliminary injunction to prevent further irreparable harm and to vindicate his statutory and constitutional rights.¹

STATEMENT OF FACTS

I. ORR and ICE Are Unlawfully Delaying O.E.O.’s Release from Government Custody

Petitioner O.E.O. has now been unlawfully detained in government custody for ***seventeen months***. O.E.O. spent seven of those months in an adult ICE detention facility after Respondents erroneously determined he was an adult. *See* Dkt. 10, Ex. B, May 21 Memo. In December 2025, six months after this case was filed and limited discovery was produced, Respondents realized their grave mistake. Dkt. 77-1, Scott Decl. ¶4; *see also* Dkt. 75, Resp’t Mot for Voluntary Remand and to Stay Discovery. On or around

¹ O.E.O. has been in government custody since November 2024. *See* Dkt. 12, O.E.O. Decl. ¶8.

1 January 1, 2026, Respondents transferred O.E.O. back to ORR custody for ORR to
 2 conduct a new age determination. Dkt. 77-2 at ¶¶3–4. On February 12, 2026,
 3 Respondents re-designated O.E.O. as an unaccompanied minor and identified O.E.O.’s
 4 Category 2 sponsor, his uncle M.O., shortly after.² Dkt.87, Notice of Compliance; *see*
 5 *also* Fox Decl. ¶4. However, despite the agency having months to complete the sponsor
 6 vetting process, O.E.O. continues to languish in government custody.

7 **A. Respondents Have Made Inconsistent Representations and Added New**
 8 **Hurdles to O.E.O.’s Release from Custody**

9 According to the O.E.O.’s last status report filed with this Court on March 20,
 10 2026, the sponsorship packet was complete and the only remaining tasks for O.E.O.’s
 11 reunification were (1) O.E.O. and M.O.’s DNA testing, which ORR must schedule, and
 12 (2) a home study, which was also pending ORR’s approval. Dkt. 95 at 2. Ms. Donovan-
 13 Kaloust explained that ORR has developed a policy of pausing reunification with
 14 sponsors, therefore O.E.O.’s release is “unlikely” “absent judicial intervention.” *Id.* at 2–
 15 3.

16 On March 25, 2026, this Court rightfully expressed that it was “frustrated” O.E.O.
 17 was still in ORR custody, and ordered the parties to meet and confer as to a proposed new
 18 scheduling order. Dkt. 97. The parties met and conferred on March 26, 2026, and on
 19 April 8, 2026, the Parties filed a Joint Notice indicating that O.E.O. would file a motion
 20 for preliminary injunction by April 24, 2026, if O.E.O. remained in ORR custody. Scott
 21 Decl. at ¶3; Dkt. 98. The week of April 13, 2026, M.O. informed Ms. Fox that the home
 22 study was completed, so the only remaining task was for ORR to schedule DNA tests,
 23 which have been pending since before February 24, 2026. Fox Decl. ¶8; Dkt. 91, Resp’t

24
 25 ² ORR categorizes unaccompanied children by the type of sponsor they will be released
 26 to the care of. O.E.O.’s sponsor is “Category 2” because he is an uncle. *See* ORR Policy
 27 Guidance UC Guide § 2.2.1, Identification of Qualified Sponsors, available at
 28 <https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2#2.2> (last visited April 23, 2026).

1 Status Update. Unfortunately, what progress had been made towards O.E.O.'s release
2 has quickly regressed since the April 8th Joint Notice.

3 Since April 8, undersigned counsel has requested updates on the progress of
4 O.E.O.'s reunification weekly, in hopes that O.E.O. would be reunified with his uncle
5 without the need for further court intervention. Scott Decl. ¶4. ORR has refused to give
6 any timeline for O.E.O.'s release and is providing inconsistent representations regarding
7 any outstanding requirements for his release to Ms. Fox and opposing counsel, Theo
8 Nickerson. Scott Decl. ¶¶4-7; Fox Decl. ¶¶8-13. On Monday, April 20, 2026, at 3:09
9 PM, Mrs. Nickerson informed undersigned counsel that the only remaining items for
10 O.E.O.'s release included the DNA testing and in-person ID verification for his sponsor,
11 neither of which had yet been scheduled. Scott Decl. ¶5.

12 On Monday, April 20, 2026, at 4:14 PM, O.E.O.'s immigration attorney, Alex
13 Fox, emailed O.E.O.'s case manager, Carlos Aragonéz, and asked him 1) if O.E.O.'s
14 DNA testing was still pending scheduling; 2) to confirm the home study took place; 3)
15 what other steps were needed to facilitate O.E.O.'s release; and 4) to confirm that O.E.O.
16 is medically cleared to travel. Fox Decl. ¶8.

17 On Tuesday, April 21, 2026, at 12:22 PM, Mr. Aragonéz replied to Ms. Fox and
18 stated that 1) O.E.O.'s DNA testing is pending and does not have a testing date; and 2)
19 O.E.O. is pending medical clearance. *Id.* at ¶9. There was no mention of an ID
20 verification requirement. *See id.* That same day, Ms. Fox responded and asked 1) when
21 O.E.O.'s DNA testing would be complete and results shared; 2) how long it takes to get
22 results after M.O.'s DNA test; 3) whether there is a sponsor ID verification requirement;
23 4) whether there were any other outstanding requirements; and 5) what steps needed to be
24 taken for medical clearance. *Id.* at ¶10.

25 On Wednesday, April 22, 2026, at 8:54 AM, Mrs. Nickerson represented to
26 undersigned counsel that 1) O.E.O.'s sponsor is scheduled for a DNA test on Friday,
27

28

1 April 24, 2026 at 10:00 AM; 2) that as soon positive results are received, O.E.O. will be
 2 released; and 3) there is no sponsor ID verification requirement. Scott Decl. ¶6. Mrs.
 3 Nickerson did not mention the medical clearance requirement. *Id.*

4 On Thursday, April 23, 2026, at 9:35 AM, Mr. Aragonex replied to Ms. Fox's
 5 Tuesday email and stated that 1) he has not received any guidance on O.E.O.'s DNA test
 6 or when to conduct it; 2) he is unsure of the timeline to receive DNA test results though
 7 most arrive within one week; 3) the in-person sponsor ID verification should be
 8 completed simultaneously with the DNA test; 4) ORR is pending a birth certificate and
 9 translation for both O.E.O.'s father and sponsor; and 5) that medical will follow up with
 10 O.E.O. for medical clearance "once the case is closer to submission." Fox Decl. ¶13. In
 11 other words, ORR still has not scheduled O.E.O. for his DNA testing and is now
 12 requiring three new additional steps, including more birth certificate translations. *Id.*
 13 ORR has a demonstrated history of making grave errors when interpreting birth
 14 certificate translations in this case, errors that resulted in O.E.O.'s unlawful age re-
 15 determination and seven-month detention in an adult facility. Dkt. 49, Mot. for Limited,
 16 Expedited Discovery (wrong Tazkira evaluated by ORR).

17 **B. ORR Has Developed a Pattern and Practice of Delaying Reunification**
 18 **of Unaccompanied Minors with Their Sponsors**

19 Since January 2025, ImmDef has "seen a repeated pattern where sponsors comply
 20 with all the requirements set by ORR, then ORR changes their policy to require more
 21 tasks from the sponsor." Dkt. 95-1, Donoval-Kaloust Decl. ¶8. "Often, even after a
 22 child's sponsor has completed all of ORR's requirements, *including positive DNA test*
 23 *results*, ORR still delays reunifying the child with their sponsor for weeks."³ Felix Decl.
 24 ¶6 (emphasis added). In a case similar to the present one, where the only pending
 25

26 ³ ORR itself has reported an increase from an average of 30 days in custody in Fiscal
 27 Year 2024 to 117 days in Fiscal Year 2025. See Unaccompanied Alien Children Data,
 28 Average Length of Care, Office of Refugee Resettlement, *available at*
<https://acf.gov/orr/about/ucs/facts-and-data> (last visited March 19, 2026).

1 requirement was the DNA appointment for the child and sponsor, it “took ORR over four
 2 months and the filing of the habeas petition for ORR to schedule the DNA appointment.”
 3 *Id.* at ¶8 (referencing *C.S.M. v. Hernandez*, No. 5:26-CV-1144 (C.D. Cal. Mar. 11, 2026)).
 4 The district court judge in that case ultimately “granted release of the child and waived
 5 ORR’s DNA testing requirement after the sponsor provided a declaration and sworn
 6 testimony as to her relationship to the child.” *Id.* The DNA testing requirement is
 7 causing indefinite delays, inevitably pushing the sponsor vetting process well beyond the
 8 timeframe contemplated by the law. *Id.* at ¶8. In ImmDef’s experience over the last
 9 year, absent judicial intervention, an unaccompanied child is very unlikely to be released
 10 from ORR custody. *Id.* at ¶¶8–10; Dkt. 95-1, Donovan-Kaloust Decl. ¶7.

11 **II. O.E.O.’s Seventeen-Month-Long Detention Has Caused Him Significant** 12 **Harm and Has Prejudiced His Immigration Case**

13 During this prolonged delay, O.E.O. has suffered significant and escalating
 14 emotional harm. Fox Decl. ¶¶16–18. O.E.O.’s emotional presentation has grown
 15 increasingly strained, as he struggles to grapple with the fact that he is in the custody of
 16 those who violated his rights. *Id.* at ¶16. While in ORR custody, O.E.O. has been
 17 denied his medication, been inappropriately berated by ORR staff, and reported that he is
 18 suffering from discrimination. *Id.* at ¶¶17-18.

19 Respondents’ actions also continue to prejudice O.E.O.’s immigration case.
 20 O.E.O. is *prima facie* eligible for special immigrant juvenile status (“SIJS”).⁴ However,
 21 O.E.O. must reside with his uncle for six months before he can obtain the requisite state
 22 court order to apply for SIJS. *Id.* at ¶19. ORR’s detention prevents O.E.O. from
 23 applying for SIJS, contrary to the TVPRA’s mandate to protect vulnerable youth and
 24 afford them the opportunity to strengthen their ties to the United States. *Id.* at ¶19; *see*
 25

26 ⁴ SIJS provides a pathway to lawful permanent residence for youth under the age of 21
 27 who have been abused, abandoned, or neglected by one or both parents, and whose return
 28 to their home country would not be in their best interest. 8 U.S.C. § 1101(a)(27)(J); 8
 C.F.R. § 204.11(b)-(d).

1 *also Osorio-Martinez v. Att’y Gen. United States of Am.*, 893 F.3d 153, 179, 180 (3d Cir.
2 2018).

3 Further Respondents’ unlawful age re-determination is impeding O.E.O.’s right to
4 affirmative asylum under the TVPRA. Fox Decl. ¶¶4, 20–22. USCIS has rejected
5 O.E.O.’s affirmative asylum application three times, including once after he was placed
6 back in ORR custody. Fox Decl. ¶¶20-22. USCIS has been unresponsive to O.E.O.’s
7 escalation of this issue, and consequently his removal proceedings cannot move forward.
8 *Id.* ¶22.

9 **III. Legal Framework Governing the Care of Unaccompanied Children**

10 The TVPRA expressly provides unaccompanied children (1) the right to prompt
11 placement in the “least restrictive setting that is in the best interest of the child”; (2) the
12 right to have USCIS exercise initial jurisdiction over their TVPRA asylum application;
13 and (3) the right to apply for SIJS. 8 U.S.C. §§ 1232(c)(2)(A), (d)(2), (d)(8). HHS and
14 DHS have both developed their own policies and procedures to ensure compliance with
15 the TVPRA.⁵ 8 U.S.C. §§ 1232(d)(8), (e).

16 In 2024, HHS adopted a final rule codifying key aspects of the framework
17 governing the care and placement of unaccompanied children as required by the
18 Homeland Security Act of 2002 (“HAS”) and the TVPRA, and implementing the
19 substantive requirements of the *Flores* Settlement Agreement. 45 C.F.R. Part 410,
20 Unaccompanied Children Foundational Rule (Jul. 1, 2024) (“Foundational Rule”).

21 The Foundational Rule contains a non-exhaustive list of factors that ORR is to
22 consider when evaluating the best interests of an unaccompanied child, 45 C.F.R. §
23 410.1001, and a non-exhaustive list of seventeen factors that ORR may consider when
24 evaluating what is the “least restrictive setting that is in the best interest of the child,”
25

26 ⁵ See ORR Policy Guidance UC Guide § 2.2, Sponsor Application Process, *available at*
27 [https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-](https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2#2.2)
28 [section-2#2.2](https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2#2.2) (last visited April 23, 2026) (hereinafter “ORR Policy Guidance”).

1 including danger to self; danger to community/others; runaway risk; age; gender;
 2 disability; specialized services or treatment requested or required; location of potential
 3 sponsor and safe, timely release options; behavior; language access; and length of stay in
 4 ORR custody, 45 C.F.R. § 410.1103(a), (b).

5 Further, the Foundational Rule provides guidance on how ORR is to evaluate the
 6 suitability of a potential sponsor who seeks to assume the care and custody of an
 7 unaccompanied child. 45 C.F.R. § 410.1202. Absent “an unexpected delay,” ORR is
 8 mandated to adjudicate a completed sponsor application for relatives who were not
 9 previously the child’s primary caregiver within 14 calendar days. 45 C.F.R. §
 10 410.1205(b).

11 STANDARD OF REVIEW

12 A preliminary injunction is warranted where a Petitioner establishes that (1) he is
 13 likely to succeed on the merits of his claim; (2) he will suffer irreparable harm absent
 14 relief; (3) the balance of the equities tips in his favor; and (4) an injunction is in the
 15 public interest. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)
 16 (citing *Winter v. Nat’l Res. Def. Council*, 555 U.S. 7, 20 (2008)). Where the government
 17 is the Respondent, the balance of the equities and public interest factors merge. *Nken v.*
 18 *Holder*, 556 U.S. 418, 435 (2009). Courts in this circuit apply a sliding scale test, and an
 19 injunction may be issued when there is a stronger showing on the balance of hardships
 20 and here are “serious questions on the merits . . . so long as the plaintiff also shows a
 21 likelihood of irreparable harm and that the injunction is in the public interest.” *All. for the*
 22 *Wild Rockies*, 632 F.3d at 1131; *see also Flathead-Lolo-Bitterroot Citizen Task Force v.*
 23 *Montana*, 98 F. 4th 1180, 1190 (9th Cir. 2024) (affirming the “serious questions” test).

24 ARGUMENT

25 O.E.O. continues to suffer irreparable harm because Respondents continue to
 26 deprive O.E.O. of his rights under the TVPRA—i.e., the right to a prompt placement in
 27 the least restrictive setting and the right to apply for affirmative forms of relief—and the
 28

1 U.S. Constitution. *See* Fox Decl. ¶6–22. Both the balance of the equities and the public
 2 interest favor releasing O.E.O. because the government has no legitimate interest in
 3 continuing to detain O.E.O. in violation of the law. As argued below, O.E.O. has
 4 satisfied the requirements of a preliminary injunction and merits relief.

5 **I. O.E.O. Is Likely to Succeed on the Merits of His Claims**

6 O.E.O is likely to succeed on the merits of his claims because Respondents have
 7 flouted their obligations under the TVPRA and the U.S. Constitution. For *seventeen*
 8 *months*, Respondents have failed to promptly place O.E.O. in the least restrictive setting
 9 and deprived him of his right to apply for affirmative forms of relief prior to being
 10 removed. 8 U.S.C. §§ 1232(b)(2)(B), (b)(4), (c)(2)(A); *see also Immigrant Defs. L. Ctr.*
 11 *v. U.S. Dep’t of Homeland Sec.*, No. CV-21-0395 FMO (RAOX), 2025 WL 1191572, at
 12 *12 (C.D. Cal. Mar. 14, 2025). Respondents have also violated O.E.O.’s constitutional
 13 right to liberty and familial association, and his property interest in his statutory
 14 entitlement to the guarantees of the TVPRA. For the reasons below, O.E.O. is likely to
 15 succeed in his statutory and constitutional claims.

16 **A. Respondents Continue to Violate O.E.O.’s TVPRA Rights**

17 The TVPRA was designed to provide “special protections” for unaccompanied
 18 minors, in light of their status as a “particularly vulnerable group.” *Saravia v. Sessions*,
 19 280 F. Supp. 3d 1168, 1178 (N.D. Cal. 2017). The TVPRA unequivocally commands
 20 that unaccompanied children “shall be promptly placed in the least restrictive setting,”
 21 and shall have the opportunity to apply for affirmative forms of relief, including asylum
 22 and special immigrant juvenile status. 8 U.S.C. § 1232(c)(2)(A), (d)(8); *see also* 8 U.S.C.
 23 § 1158(b)(3)(C); *R.R. v. Orozco*, 2020 WL 3542333 at *8 (D.N.M. June 30, 2020)
 24 (enjoining Respondents from applying unlawful age determination that prevented
 25 Petitioner’s eligibility for SIJS and initial jurisdiction of asylum claim with USCIS).
 26 Despite having re-determined O.E.O. as an unaccompanied minor, Respondents continue
 27 to violate the TVPRA by denying O.E.O. these rights.

28

1 ***Release to Sponsor.*** Under the TVPRA, “ORR [is] in charge of ‘providing safe
 2 and secure placements for children.’” *Flores v. Sessions*, 862 F.3d 863, 876 (9th Cir.
 3 2017) (quoting 8 U.S.C. § 1232(c)(2)). The TVPRA’s “focus on care and placement –
 4 rather than on detention – is evident” from the plain text of the statute. *Id.* Crucially, the
 5 statute mandates release from ORR custody to an appropriate sponsor unless the federal
 6 government makes a finding that the minor is a danger to themselves or to the
 7 community, or a flight risk. *See Saravias*, 280 F. Supp. 3d at 1196; *see also* 8 U.S.C. §
 8 1232(c)(2)(A).

9 Here, by failing to timely adjudicate M.O.’s application to assume the care and
 10 custody of O.E.O., Respondents are violating the TVPRA’s mandate to promptly place
 11 O.E.O. in the least restrictive setting. Respondents have made no showing that this
 12 indefinite detention is supported by any finding that O.E.O. is a flight risk or a danger to
 13 the community, nor could they. O.E.O. was detained in an ORR Program between
 14 November 2024 and May 2025 without absconding, even though ORR was incorrectly
 15 accusing O.E.O. of being an adult. *See* Dkt. 11, Fox Decl. ¶¶12–17 (detailing mistakes
 16 with May 1 and May 21 age re-determination process); *see also* Dkt. 87, Resp’t Notice of
 17 Compliance (ORR has “determined that [O.E.O.] is a minor). And now, despite being
 18 mistreated by ORR facility staff and being provided no timeline for his release, O.E.O.
 19 has made no attempt to abscond since his transfer back to ORR custody. Fox Decl. ¶18
 20 (describing O.E.O.’s harsh treatment in ORR custody). Further, there is no evidence
 21 indicating O.E.O. has ever engaged in conduct that caused harm to himself or to others.
 22 Fox Decl. ¶23. Given O.E.O. is neither a danger to the community nor a flight risk,
 23 Respondents must promptly release him to his sponsor. *See* 8 U.S.C. § 1232(c)(2)(A).

24 Further, pursuant to ORR’s regulations implementing the TVPRA, ORR was
 25 required to adjudicate M.O.’s application “within 14 calendar days of receipt of the
 26 application.” 45 C.F.R. § 410.1205(b). Respondents have failed to follow this
 27 obligation. M.O.’s application has been submitted since March 19, 2026, so Respondents
 28

1 should have adjudicated and released O.E.O. by April 2, 2026. Dkt. 95 at 1. Instead,
 2 Respondents have invented new requirements, such as DNA testing, that are not required
 3 by law.⁶ See 45 C.F.R. § 410 (making no mention of DNA testing). ORR only added the
 4 additional sponsorship DNA testing requirement in March 2025 as a policy,⁷ and other
 5 courts have found that requirement unnecessary and have waived it for release. See Felix
 6 Decl. ¶8.

7 **Affirmative Relief.** O.E.O. is actively being denied the ability to apply for asylum
 8 and SIJS. The TVPRA gives USCIS initial jurisdiction over asylum applications filed by
 9 unaccompanied children. See 8 U.S.C. § 1158(b)(3)(C); see also 8 U.S.C. § 1232(d)(8).
 10 On July 7, 2025, USCIS rejected O.E.O.'s asylum application because he was
 11 erroneously de-designated as an unaccompanied minor. Fox Decl. ¶20. Since that
 12 rejection, O.E.O. has attempted to refile his application with USCIS twice, but both times
 13 the application was rejected for lack of jurisdiction. *Id.* at ¶21–22. If not for
 14 Respondents' erroneous May 21 Age Determination, O.E.O.'s I-589 asylum application
 15 would have already been pending for a year and he would not be in removal proceedings.
 16 See Dkt. 11, Fox Decl. ¶¶10–11. Instead, Respondents refuse to accept his application
 17 for relief, in direct contravention of the TVPRA. Fox Decl. ¶¶20–22.

18 O.E.O. is also eligible to apply for SIJS, a classification specifically created by
 19 Congress "to provide humanitarian protection for abused, neglected, or abandoned
 20 children." See 6 USCIS Policy Manual, pt. J, ch. 1 (August 21, 2025). SIJS first requires
 21 an unaccompanied child to obtain a state court order finding that (1) reunification with
 22

23 ⁶ In addition, during the notice and comment period prior to adopting the Foundational
 24 Rule, ORR explicitly declined to require DNA testing, stating that "DNA testing raises
 25 multiple issues and is outside the scope of this rule" in response to a comment. See ORR
 26 Response to Comment on Proposed Unaccompanied Children Program Foundational
 27 Rule, 89 Fed. Reg. 34384 (published April 30, 2024) (codified at 45 C.F.R. § 410),
 28 <https://www.federalregister.gov/d/2024-08329/p-563> (last visited April 24, 2026).

⁷ See Field Guidance #27 – DNA Testing Expansion, Office of Refugee Resettlement,
 available at [https://acf.gov/sites/default/files/documents/orr/FG-27_-_](https://acf.gov/sites/default/files/documents/orr/FG-27_-_DNA_Testing_Expansion.pdf)
 _DNA_Testing_Expansion.pdf (last visited April 24, 2026)

1 one or both parents is not viable due to abuse, abandonment, or neglect; and (2) that it is
 2 not in the best interest of the child to return to their home country.⁸ But that state court
 3 order can only be obtained *after* the child is released. Fox Decl. ¶19. Had Respondents
 4 never unlawfully de-designated O.E.O., he likely would already have obtained SIJS. *Id.*
 5 Instead, he has been unable to even start the process because Respondents unlawfully
 6 detained O.E.O. in an adult detention facility and now have created never-ending
 7 obstacles to his reunification with his family. Fox Decl. ¶¶6–22. Absent intervention
 8 from this Court, O.E.O. will continue to be deprived of both of these TVPRA rights.

9 **B. Respondents Continue to Unconstitutionally Deny O.E.O. His Due**
 10 **Process Rights**

11 The Due Process Clause of the Fifth Amendment to the United States Constitution
 12 forbids the government from depriving “any person,” regardless of their immigration
 13 status, “of life, liberty, or property without due process of law.” U.S. Const. amend. V.;
 14 *see also Zadvydas*, 533 U.S. at 693 (2001). Respondents have deprived O.E.O. of both
 15 his substantive and procedural due process rights.

16 **1. Respondents Violated O.E.O.’s Substantive Due Process Rights**

17 The government has two legitimate interests that may be served by civil
 18 immigration detention: preventing flight and protecting the community from danger.
 19 *Zadvydas*, 533 U.S. at 701. When it is untethered to any legitimate government interest,
 20 the detention is in violation of substantive due process rights. *Id.* O.E.O.’s detention of
 21 *seventeen months* violates his substantive due process right to liberty because there is no
 22 evidence to suggest he’s either a flight risk or a danger, therefore there is no government
 23 interest. *See supra* I.A.

24 District courts have also emphasized the well-established nature of the
 25 “substantive due process right to family integrity or to familial association.” *Lucas R.*,

26 ⁸ After obtaining the state court orders, the unaccompanied child can file Form I-360,
 27 which USCIS must adjudicate not later than 180 days after the date the petition was filed.
 28 *See* 8 U.S.C. §1232 (d)(2).

2018 WL 7200716, at *9 (quoting *Rosenbaum v. Washoe City*, 663 F.3d 1071, 1079 (9th Cir. 2011)); *Ms. L. v. U.S. Immigration and Customs Enforcem.*, 310 F. Supp. 3d 1133, 1148 (S.D. Cal. 2018), modified sub nom, *Ms. L. v. U.S. Immigr. & Customs Enf't*, 330 F.R.D. 284 (S.D. Cal. 2019) (finding the government needed to achieve its stated purpose “in a way that preserves the class members’ constitutional rights to family association and integrity”). Respondents’ continued detention of O.E.O. away from uncle M.O. for *seventeen months* has considerably encroached upon this right.

2. Respondents Violated O.E.O.’s Procedural Due Process Rights

Respondents have also deprived O.E.O. of procedural due process by infringing on his rights under the TVPRA, his right to liberty, and his right to family integrity. *See Immigrant Defs. L. Ctr.*, 2025 WL 1191572, at *15 (“statutory entitlements [under the TVPRA] are constitutionally protected property interests”); *See Lucas R.*, 2018 WL 7200716, 9 (recognizing procedural due process right to family integrity). Courts analyze procedural due process claims in two steps. First, the court must determine if O.E.O. has a protected interest in his continued liberty. *See Doe v. Bacerra*, 787 F. Supp. 3d at 1090-93 (E.D. Cal. March 3, 2025). If so, the court then uses the three-factor *Mathews* framework to determine what process is due. *Id.* at 1093.

a. O.E.O. Has Protected Liberty and Property Interests

O.E.O. possesses a protected liberty and property interest for three reasons. First, O.E.O. undoubtably possesses a protected liberty interest in freedom from physical confinement that is “inherent in the Due Process Clause.” *R.D.T.M. v. Wofford*, 2025 WL 2617255, at *4 (E.D. Cal. Sept. 9, 2025) (quoting *Guillermo M.R. v. Kaiser*, 2025 WL 1983677, at *4 (N.D. Cal. July 17, 2025)) (emphasis in original); see also *Zadvydas*, 533 U.S. at 701.

Second, the fundamental right to family unity independently requires the need for procedural due process protections. *See Lucas R.*, 2018 WL 7200716, *9. In *Lucas R.*, the court found that minors with Category 2, close relative sponsors “also have a

1 [c]onstitutional interest in associating with their family members . . . and possess a
 2 significant interest in the right to familial association.” 2:18-cv-05741- DMG-PLA, Dkt.
 3 No. 376, at 37 (Order Re Cross-Motions for Summary Judgment [263, 271]) (March 11,
 4 2022). These principles apply with heightened force where, as here, O.E.O. remains
 5 separated from his uncle after fleeing death threats from the Taliban, spending six
 6 harrowing months in the deadliest ICE immigration detention center, and being
 7 mistreated by staff members while in ORR custody.⁹ See Fox Decl. ¶¶17–18; Dkt. 12,
 8 O.E.O. Decl. ¶5. By holding the child in prolonged detention and erecting unnecessary
 9 hurdles to the reunification process, Respondents burden both sides of this
 10 constitutionally protected close-family-member relationship.

11 Third, O.E.O. has a protected property interest in his statutory entitlements under
 12 the TVPRA. See 8 U.S.C. § 1232(b)(4), (c)(2)(A); see also *Immigrant Defs. L. Ctr.*, 2025
 13 WL 1191572, at *15 (“statutory entitlements [under the TVPRA] are constitutionally
 14 protected property interests”). As argued *supra* at I.A., O.E.O. has been deprived of
 15 these entitlements as a result of Respondents’ unlawful actions.

16 **b. The *Mathews* Factors Weigh in Favor of Releasing O.E.O.**
 17 **to His Uncle**

18 An analysis of the balancing test outlined in *Mathews* clearly demonstrates that
 19 O.E.O. was deprived of due process. 424 U.S. 319, 335 (1976). The *Mathews* test
 20 balances (1) the private interest threatened by government action; (2) the risk of
 21 erroneous deprivation of such interest and the probable value of additional procedural
 22 safeguards; and (3) the government’s interest. *Id.*; see *Pereira v. Jennings*, 598 F. Supp.
 23 3d 736, 745-56 (N.D. Cal. Apr. 15, 2022) (applying *Mathews* test where noncitizen was
 24 at risk of re-detention and holding that petitioner was “entitled to a post-deprivation bond
 25 hearing should ICE re-detain him”). Applied here, each *Mathews* factor clearly weighs in
 26 favor of O.E.O.’s immediate release and reunification with his uncle.

27 _____
 28 ⁹ *Supra* note 2.

1 **First**, O.E.O.’s private interest is strong. *Zadvydas*, 533 U.S. at 690 (“Freedom
 2 from imprisonment—from government custody, detention, or other forms of physical
 3 restraint—lies at the heart of the liberty [the Due Process Clause] protects.”).
 4 Respondents’ actions have deprived O.E.O. of freedom and his right to be placed in the
 5 least restrictive setting. His private interest also encompasses the fundamental interest in
 6 familial association and in being raised by a close family member rather than in
 7 institutional custody. *See Lucas R.*, 2018 WL 7200716, at 9. Additionally, Respondents’
 8 now rescinded age re-determination continues to affect O.E.O., depriving O.E.O. of his
 9 TVPRA right to pursue affirmative asylum with USCIS and his right to pursue SIJS. *See*
 10 *R.R.*, 2020 WL 3542333 at *8 (enjoining Respondents from applying unlawful age
 11 determination which prevented Petitioner eligibility for SIJS and initial jurisdiction of
 12 asylum claim with USCIS).

13 **Second**, the risk of erroneous deprivation is high. Respondents flouted their
 14 TVPRA obligations to O.E.O. when he was first in their custody between November
 15 2025 and May 2025 by failing to place him in the least restrictive setting, and detaining
 16 him at Eloy for seven months. *See* Dkt. 87; Dkt. 10, Ex. B, May 21 Memo; Dkt. 12,
 17 O.E.O. Decl. ¶8. Now, after nearly four months back in ORR custody, somehow ORR
 18 cannot decide what more is needed to secure his release. *See* Scott Decl. ¶4; *see also* Fox
 19 Decl. ¶¶6–13.

20 For example, on Monday, April 20, Respondents’ counsel represented to
 21 undersigned counsel that the only remaining requirements were M.O.’s DNA test and in-
 22 person ID verification, neither of which had been scheduled. Scott Decl. ¶5; *see also*
 23 Dkt. 93 (“still pending an appointment for DNA testing” as of March 11, 2026). On
 24 Wednesday, April 22, 2026, Respondents’ counsel represented that only M.O.’s DNA
 25 test remained pending and it was scheduled for Friday, April 24, 2026, there is no ID
 26 verification requirement, and that O.E.O. would be released as soon as positive DNA test
 27 results were received. *Id.* ¶6. On April 23, 2026, O.E.O.’s case manager stated that there
 28

1 were suddenly five outstanding tasks to be completed: (1) O.E.O.'s DNA testing; (2)
 2 M.O.'s DNA testing; (3) translation of M.O.'s and O.E.O.'s sponsors' birth certificates;
 3 (4) in-person sponsor ID verification; and (5) medical clearance of O.E.O. Fox Decl.
 4 ¶13. Under these circumstances, there is a substantial risk that O.E.O.'s continued
 5 detention rests on a deficient process with incomplete, inconsistent, or legally insufficient
 6 bases. Felix Decl. ¶¶6–10. Respondents have provided no explanation why these
 7 requirements, all within their control, have not previously been completed or even
 8 disclosed. Nor can they say they are legally required. *See supra* I.A.; *see also* note 9, 10.
 9 Therefore, the risk of erroneous deprivation is high.

10 **Third**, Respondents have no legitimate interest in detaining an unaccompanied
 11 child in violation of the TVPRA. It is “always in the public interest to prevent the
 12 violation of a party’s constitutional rights.” *See Rodriguez v. Robbins*, 715 F.3d 1127,
 13 1145 (9th Cir. 2013). Further, the “most obvious Government interests here are
 14 protecting the welfare of children and the safety of the public.” *Maldonado v. Lloyd*, No.
 15 18 Civ 3098 (JFK), 2018 WL 2089348, at *1, *10 (S.D.N.Y. May 4, 2018) (citing
 16 *Saravia*, 280 F. Supp. 3d at 1199-1200). Those interests are not served by continued
 17 institutional detention where the sponsor poses no risk to the child that warrants
 18 continued separation. Further, the government’s fiscal and administrative interests
 19 affirmatively support release. ORR custody is extraordinarily expensive, so O.E.O.’s
 20 reunification with his sponsor conserves resources. *See Hernandez v. Sessions*, 872 F.3d
 21 976, 997 (9th Cir. 2017) (cost of immigration detention is “staggering”). Avoiding the
 22 minimal procedural steps to reunification, such as DNA testing, which is not legally
 23 required, also conserves resources. This factor thus also tips in O.E.O.’s favor.

24 In sum, under the *Mathews* framework, the balance of interests overwhelmingly
 25 favors O.E.O.

26 Consistent with other courts in this circuit, this Court should find that O.E.O. is
 27 likely to succeed on the merits of his claims and order his immediate release from

1 detention. *Id.* at 1094; *see also Santos v. Smith*, 260 F. Supp 3d 598, 613-15 (W.D. Va.
 2 2017) (granting habeas relief and ordering release where ORR’s “very significant,
 3 unexplained delay” and lack of adequate procedures “violated procedural due process”);
 4 *Maldonado*, 2018 WL 2089348, at *10-12 (same).

5 **II. O.E.O. Is Actively Suffering Irreparable Harm**

6 A preliminary injunction is appropriate where a Petitioner shows that, absent
 7 relief, they face irreparable harm—i.e., harm that is “immediate,” *Caribbean Marine*
 8 *Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988), and “for which there is no
 9 adequate legal remedy,” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir.
 10 2014). O.E.O.’s detention of *seventeen months*, and counting, in government custody
 11 undeniably constitutes “a loss of liberty that is . . . irreparable.” *Moreno Galvez v.*
 12 *Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash 2020) (*Moreno II*) *aff’d in part*,
 13 *vacated in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th
 14 821 (9th Cir. 2022). The record also demonstrates escalating emotional and
 15 developmental harm directly tied to O.E.O.’s seven-month detention at Eloy, his
 16 seemingly indefinite custody in ORR, and O.E.O.’s inability to apply for relief. *See* Fox
 17 Decl. ¶¶6–22; *see also* Dkt. 10, Ex. B, May 21 Memo; *see also* Dkt. 12, O.E.O. Decl.
 18 ¶¶20–22; *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 264, 191 (injuries resulting from detention of
 19 children are “beyond remediation.”). Courts have long recognized that family separation
 20 imposes serious and lasting harm on children. *Ms. L. v. ICE*, 310 F. Supp. 3d 1133, 1146
 21 (S.D. Cal. 2018). Each additional day in custody deepens injuries that cannot be undone,
 22 clearly satisfying the irreparable-harm requirements that underlie injunctive relief.

23 For the reasons argued above, O.E.O. is facing ongoing irreparable harm that will
 24 only continue absent relief from this court.

25 **III. The Balance of the Equities and Public Interest Weigh in O.E.O.’s Favor**

26 When the government is a party, the balance of the equities and the public interest
 27 factors merge. *Nken*, 556 U.S. at 435. Where granting an injunction will not

1 “substantially injure the other parties,” the balance of equities tips in the plaintiff’s favor.
 2 *Id.* at 434. A petitioner’s “likelihood of success on the merits of a constitutional claim
 3 also tips the merged third and fourth factors decisively in his favor.” *Baird v. Bonta*, 81
 4 F.4th 1036, 1042 (9th Cir. 2023).

5 Here, there will be no harm to Respondents if this Court issues a preliminary
 6 injunction because the Government “cannot suffer harm from an injunction that merely
 7 ends an unlawful practice.” *Rodriguez*, 715 F.3d at 1145; *cf. Zepeda v. I.N.S.*, 753 F.2d
 8 719, 727 (9th Cir. 1983). O.E.O. is being indefinitely held in ORR custody and
 9 unlawfully blocked from applying for asylum and SIJS. Fox Decl. ¶¶19–22. It is in the
 10 public interest to bring Respondents in compliance with the laws governing the safety
 11 and care of unaccompanied children, which is exactly what O.E.O. seeks. *See Saravia*,
 12 280 F. Supp. 3d at 1196; *see also Ramirez*, 310 F. Supp. 3d at 33 (“The public interest
 13 surely does not cut in favor of permitting an agency to fail to comply with a statutory
 14 mandate.”). As courts have recognized, unnecessary immigration detention drains public
 15 resources and undermines confidence in the rule of law. *Hernandez*, 872 F.3d at 996.
 16 Ensuring that ORR acts promptly and lawfully promotes both fiscal responsibility and the
 17 humane administration of the immigration system. The public interest is better served by
 18 reunification than by continued institutional custody. *See Beltran*, 222 F. Supp. 3d at
 19 485; *see also Santos*, 260 F. Supp. 3d at 615.

20 CONCLUSION

21 For the foregoing reasons, this Court should grant O.E.O.’s motion for a
 22 preliminary injunction, enjoin Respondents from continuing to deprive O.E.O. of his
 23 statutory and constitutional rights, and order his immediate release to M.O.

24
 25 DATED: April 24, 2026

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

CERTIFICATE OF COUNSEL

I, Carson Adrianna Scott, declare as follows:

I am an adult over the age of eighteen and a resident of the state of California.

The information set forth herein is true and correct of my personal knowledge and if asked to testify thereto, I would do so competently.

Pursuant to Federal Rule of Civil Procedure 65(a), I hereby CERTIFY THAT ON March 26, 2026, the parties met and conferred as to a proposed joint scheduling notice. On that day, the parties agreed to a deadline of April 24, 2026, for Petitioner to file a motion for preliminary injunction. Further, on Thursday, April 23, 2026, I emailed U.S. Attorney Theo Nickerson with notice that Petitioner is filing this motion in accordance with the Joint Notice Setting Forth New Scheduling Order. *See* Dkt. 98; *see also* Scott Decl. ¶8.

DATED: April 24, 2026

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