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

11 SUHAYB MUHUMED DABLE,

12 Petitioner,

13 v.

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

25 Respondents.

CIVIL CASE NO.: '26CV2375 BAS DDL

**PETITION FOR WRIT OF HABEAS  
CORPUS UNDER 28 U.S.C. § 2241;  
ORDER TO SHOW CAUSE WITHIN  
THREE DAYS; COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**[Expedited Hearing Requested]  
[Oral Argument Requested]**


26 Petitioner Suhayb Muhumed Dable (a.k.a. Muhumed Suhaut Dable), by and  
27 through his undersigned counsel, respectfully petitions this Court for a writ of habeas  
28 corpus pursuant to 28 U.S.C. § 2241 and states as follows:

1 I. INTRODUCTION

2 1. This petition presents a straightforward question: Can the federal government  
3 detain a child in an adult immigration detention facility based solely on a  
4 probabilistic dental X-ray that concedes a substantial likelihood of minority while  
5 ignoring a certified birth certificate establishing that the child is 17 years old and call  
6 that an adequate “age determination”?  
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9 2. The answer, under the Trafficking Victims Protection Reauthorization Act  
10 (“TVPRA”), 8 U.S.C. § 1232(b)(4), is no.  
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12 3. Petitioner Suhayb Muhumed Dable is a 17-year-old Ethiopian national of  
13 Somali ethnicity, currently detained at the Otay Mesa Detention Center (“OMDC”),  
14 located at 7488 Calzada de la Fuente, San Diego, California, an adult ICE detention  
15 facility, alongside unrelated adults. He has been there since approximately January 8,  
16 2026, following his surrender to U.S. Customs and Border Protection at the southern  
17 border on January 5, 2026.  
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20 4. Suhayb has a certified birth certificate establishing his date of birth as  
21  Under that document, the most direct and fundamental form of  
22 evidence of a person’s age” Suhayb Muhumed Dable is 17 years old.  
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24 5. Despite this and other evidence, ICE’s Enforcement and Removal Operations  
25 (“ERO”) conducted a forensic dental exam and, on the basis of that exam alone,  
26 determined that Suhayb was an adult. The dental exam concluded an 87.05%  
27 statistical probability that he is at least 18 years old. Critically, this figure means that  
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1 the very instrument the government chose to rely upon acknowledges nearly a one-in-  
2 eight chance that Suhayb is a minor and that is before accounting for documents  
3 confirming his birth date, his physical appearance consistent with minority, or any  
4 other evidence.  
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6 6. This is not a close call under the law. Federal courts across the country,  
7 including this District, have consistently held that ICE and ORR violate the TVPRA  
8 when they rely exclusively on dental radiographic assessments, no matter how high  
9 the stated probability. See, e.g., **Ex. J**, *N.B. v. Barr*, No. 19-CV-1536 JLS (LL) (S.D.  
10 Cal. Oct. 1, 2019) (93.53% dental finding insufficient; preliminary injunction  
11 granted); **Ex. K**, *I.J. v. Keeton*, No. CV-19-01904-PHX-SMB (JZB), 2019 U.S. Dist.  
12 LEXIS 229193 (D. Ariz. Apr. 17, 2019) (87.70% dental finding insufficient; TRO  
13 granted); **Ex. L**, *L.B. v. Keeton*, No. CV-18-03435-PHX-JJT (MHB) (D. Ariz. Oct.  
14 26, 2018) (92.55% insufficient; transfer to ORR ordered); **Ex. M**, *B.I.C. v. Asher*, No.  
15 C16-132-MJP-JPD (W.D. Wash. Feb. 19, 2016) (92.55% insufficient; strong  
16 likelihood of TVPRA violation established).  
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21 7. The TVPRA commands that age determinations take into account “multiple  
22 forms of evidence, including the **non-exclusive** use of radiographs.” 8 U.S.C. §  
23 1232(b)(4) (emphasis added). ERO has done exactly what the statute forbids: it used  
24 a dental radiograph exclusively, disregarded a birth certificate and other identification  
25 documents, and placed a minor in an adult detention facility. That is unlawful.  
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1 8. Suhayb respectfully asks this Court to immediately order his release from adult  
2 detention or, in the alternative, order a bond hearing before this Court. Suhayb  
3 additionally seeks a declaration that the age determination was unlawful, an order  
4 transferring him from ICE adult custody to ORR juvenile custody, and injunctive  
5 relief barring use of the flawed age determination in future proceedings.  
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## 8 9 II. PARTIES

10 9. Petitioner SUHAYB MUHUMED DABLE (A-Number ) is a  
11 native and citizen of Ethiopia. He is currently detained at the Otay Mesa Detention  
12 Center in San Diego, California.  
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14 10. Respondent CHRISTOPHER J. LAROSE is the Senior Warden at the Otay  
15 Mesa Detention Center, where Suhayb is being held. He is Suhayb's immediate  
16 custodian and is responsible for Suhayb's custody. Suhayb sues him in his official  
17 capacity.  
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19 11. Respondent PATRICK DIVVER is the Field Office Director of ICE's San  
20 Diego Field Office for Enforcement and Removal Operations. That office determines  
21 whether Suhayb will be detained in ICE custody or released. Respondent Divver has  
22 custodial authority over Suhayb, who names him in his official capacity.  
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24 12. Respondent TODD M. LYONS is the Acting Director of the United States  
25 Immigration and Customs Enforcement. ICE is a component of DHS, 6 U.S.C. § 271,  
26 and is the agency responsible for enforcing immigration laws, including detaining  
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1 Suhayb. Respondent Lyons has custodial authority over Suhayb, who names him in  
2 his official capacity.

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4 13. Respondent MARKWAYNE MULLIN is the Secretary of the United States  
5 Department of Homeland Security. DHS is the federal agency responsible for  
6 enforcing immigration laws and granting immigration benefits. See 8 U.S.C. §  
7 1103(a); 8 C.F.R. § 2.1. Respondent Mullin has ultimate custodial authority over  
8 Suhayb, who names him in his official capacity.

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10 14. Respondent TODD BLANCHE is the Acting Attorney General of the United  
11 States. He has supervisory authority over the Executive Office for Immigration  
12 Review (EOIR).

### 13 14 15 16 **III. JURISDICTION AND VENUE**

17 15. This Court has subject-matter jurisdiction under 28 U.S.C. § 2241, which  
18 grants federal district courts the power to issue writs of habeas corpus to persons held  
19 in custody in violation of the laws or Constitution of the United States.

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21 16. Venue is proper in the United States District Court for the Southern District of  
22 California under 28 U.S.C. §§ 1391(b)(2), (e)(1), and 2243 because Suhayb is  
23 detained at the Otay Mesa Detention Center, located in San Diego County, within this  
24 District. See *Rumsfeld v. Padilla*, 542 U.S. 426, 451–52 (2004) (habeas petition must  
25 be filed in the district of confinement).

1 17. This petition challenges not the exercise of ICE’s discretionary judgment but  
2 the statutory framework, specifically, whether ICE complied with the procedural  
3 requirements of 8 U.S.C. § 1232(b)(4) before asserting authority to detain Suhayb as  
4 an adult. Challenges to the statutory framework authorizing detention are cognizable  
5 in habeas and do not implicate the jurisdictional limits of 8 U.S.C. § 1252. See  
6 *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018) (“[T]he extent of the  
7 Government’s detention authority is not a matter of ‘discretionary judgment,’  
8 ‘action,’ or ‘decision.’”); **Ex. N**, *R.R. v. Orozco*, No. Civ. 20-564 KG/GBW, 2020  
9 WL 3542333, at \*3 (D.N.M. June 30, 2020) (“Petitioner’s claim that ICE and the  
10 Immigration Judge did not follow these statutory requirements in finding he was an  
11 adult is a ‘challenge to the statutory framework,’ not to discretionary agency  
12 decisions.”); **Ex. O**, *V.V. v. Orozco*, No. Civ. 20-560 KG/CG, 2020 WL 3542480, at  
13 \*3 (D.N.M. June 30, 2020) (same); **Ex. J**, *N.B. v. Barr*, 2019 WL 4849175, at \*5  
14 (S.D. Cal. Oct. 1, 2019) (§ 2241 jurisdiction proper for TVPRA age determination  
15 challenge); **Ex. P**, *Alam v. Keeton*, No. CV-19-05538-PHX-MTL (CDB), 2020 WL  
16 5439513, at \*4 (D. Ariz. Sept. 9, 2020) (“The Court has habeas corpus jurisdiction to  
17 review this claim because it challenges ICE’s detention authority, not its discretionary  
18 decision to detain.”).

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25 18. The TVPRA creates a mandatory statutory framework governing the treatment  
26 of unaccompanied alien children (“UACs”). See 8 U.S.C. § 1232. Section 2241  
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1 habeas proceedings remain available as a forum for challenges to compliance with  
2 this statutory framework. *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001).

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4 19. This Court also has jurisdiction to grant declaratory and injunctive relief  
5 pursuant to 28 U.S.C. §§ 2201, 2202 and the Administrative Procedure Act, 5 U.S.C.  
6 § 706.

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9 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

10 20. Exhaustion of administrative remedies is not required for constitutional claims  
11 brought under 28 U.S.C. § 2241. See *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th  
12 Cir. 2017). To the extent exhaustion is required, administrative exhaustion would be  
13 futile. There is no adequate administrative remedy for the ongoing, irreparable harm  
14 of a minor detained in an adult facility in violation of a federal statute. See **Ex. N**,  
15 *R.R. v. Orozco*, 2020 WL 3542333, at \*4 (excusing exhaustion as futile where  
16 petitioner faced imminent irreparable harm); **Ex. M**, *B.I.C. v. Asher*, 2016 WL  
17 8672760 (same). Suhayb has been in adult detention since January 8, 2026, over three  
18 months, without relief. Further administrative delay would compound the ongoing  
19 constitutional and statutory violation.  
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25 **V. FACTUAL BACKGROUND**

26 21. Suhayb is a native and citizen of Ethiopia who credibly and consistently  
27 reports that he was born on  and is therefore a minor child. See  
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1 **Ex. A**, Documents showing Suhayb's date of birth. He arrived in the United States  
2 without a parent or legal guardian and was apprehended by immigration authorities  
3 near the border. See **Ex. C**, Notice to Appear and Amendment. Since his arrival, at  
4 every point of contact with U.S. officials, Suhayb has repeatedly stated the same date  
5 of birth. Suhayb has been in adult detention since January 8, 2026, over three months,  
6 and continues to be unlawfully held in an adult facility in violation of the TVPRA.  
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9 22. Suhayb's claimed age is supported by multiple, mutually reinforcing  
10 documents. He possesses a certified Ethiopian birth certificate issued by the  
11 appropriate civil authority, an Ethiopian national identification card, and school  
12 records from Ethiopia. **Ex. A**. Each of these documents independently lists his date of  
13 birth as September 1, 2008. The documents are facially valid, internally consistent,  
14 and consistent with each other. At no time have DHS, ICE, CBP, USCIS, or any other  
15 U.S. government agency found these documents to be fraudulent, altered, or  
16 otherwise unreliable. Nor have Respondents identified any contrary documentary  
17 evidence, biometric hit, or prior inconsistent age claim that would undermine these  
18 records.  
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22 23. Notwithstanding this consistent and un rebutted documentary evidence, ICE  
23 determined that Suhayb is an adult based primarily, if not exclusively, on a single  
24 dental X-ray. ICE obtained a forensic dental age assessment that reported an 87.05%  
25 "probability" that Suhayb is 18 years of age or older. See **Ex. B**, E-mails with ICE.  
26 ICE then treated this probabilistic estimate as dispositive of his age. The  
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1 age-determination form and related records produced by ICE do not reflect any  
2 meaningful consideration of Suhayb's birth certificate, national ID, or school records,  
3 and they contain no explanation for discounting those documents. There is no  
4 indication that ICE applied the "totality of the evidence" standard that federal law  
5 requires for age determinations.  
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8 24. On the basis of this age finding, ICE has classified Suhayb as an adult and  
9 placed him in adult civil immigration detention at the Otay Mesa Detention Center.  
10 **Exhibit I** confirms his current custody there. He is housed with adults in a secure  
11 detention environment, notwithstanding his documentary evidence of minority and  
12 his status as an unaccompanied child at the time of entry.  
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15 25. While detained, Suhayb was the victim of several incidents of sexual assault  
16 and attempted sexual assault by his roommate in Juliet pod. An officer saw Suhayb  
17 push his roommate away during one such incident and put Suhayb, a minor, in  
18 segregation while taking no corrective action against the roommate. See **Ex. E**,  
19 Declaration of Christina Tong, Attorney for Petitioner.  
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21 26. Suhayb has an available, stable, and qualified family sponsor in the United  
22 States. His relative, Randa Dable, is a U.S. citizen who resides in Aurora, CO.  
23 **Exhibit H** contains Ms. Dable's detailed sponsor letter, a copy of her driver's license,  
24 her U.S. passport, proof of her residence, and evidence of her financial ability to care  
25 for Suhayb. Ms. Dable has affirmatively offered to assume custody of Suhayb  
26 immediately and to ensure his appearance at all immigration proceedings. Nothing in  
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1 the record suggests that placement with Ms. Dable would be unsafe or inconsistent  
2 with the best interests of the child.

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4 27. Accordingly, the only barrier to Suhayb's transfer to the custody of the Office  
5 of Refugee Resettlement (ORR) or his release to his vetted family sponsor is ICE's  
6 legally deficient age determination. That determination rests on a single, inherently  
7 probabilistic dental X-ray, disregards multiple consistent official documents  
8 establishing Suhayb's minority, and has never been supported by any finding of fraud  
9 or conflicting evidence. The result is that a child, on the face of the record, is being  
10 held as an adult in an adult immigration detention facility in direct tension with the  
11 statutory protections Congress enacted for unaccompanied noncitizen children.  
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## 15 VI. LEGAL FRAMEWORK

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17 28. The federal habeas corpus statute provides that courts "shall" issue writs of  
18 habeas corpus to persons in custody "in violation of the Constitution or laws . . . of  
19 the United States." 28 U.S.C. § 2241(c)(3). A person may seek a writ of habeas  
20 corpus in the district of confinement by naming their immediate custodian as  
21 respondent. *Padilla*, 542 U.S. at 435.  
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24 29. Statutory violations, including violations of the TVPRA, are cognizable on  
25 habeas. See *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011) ("[C]laims that the  
26 discretionary process itself was constitutionally flawed are cognizable in federal  
27 court on habeas because they fit comfortably within the scope of § 2241.").

1 30. This petition does not seek review of, or any order that would invalidate, any  
2 final order of removal – though none currently exists. Rather, Suhayb challenges the  
3 legality of his present place and conditions of custody and the process by which  
4 Respondents determined, contrary to the TVPRA, that he is an adult. Such claims  
5 fall squarely within the “core” of habeas authorized by 28 U.S.C. § 2241. See  
6 *Department of Homeland Security v. Thuraissigiam*, 140 S. Ct. 1959, 1970 (2020)  
7 (distinguishing core habeas challenges to “present physical confinement” from  
8 broader attacks on immigration decisions).

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12 31. The jurisdiction-stripping provisions of 8 U.S.C. § 1252, including §  
13 1252(a)(5) and § 1252(b)(9), do not bar this action. Section 1252(a)(5) channels  
14 “judicial review of an order of removal” to the courts of appeals, but Suhayb does  
15 not challenge any order of removal. Section 1252(b)(9) applies only to “claims  
16 arising from removal proceedings,” and even then must be read narrowly so as not to  
17 preclude habeas jurisdiction over detention and conditions-of-confinement claims.  
18 See *Jennings v. Rodriguez*, 583 U.S. 281, 290–91 (2018); *J.E.F.M. v. Lynch*, 837  
19 F.3d 1026, 1031–32 (9th Cir. 2016). Suhayb’s claim that he is being unlawfully  
20 detained in an adult ICE facility in violation of a separate statutory scheme (the  
21 TVPRA) is not a challenge to the merits of his removability.

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25 32. Nor is this petition barred as an unreviewable exercise of discretion. Suhayb  
26 does not seek review of any discretionary judgment concerning detention or  
27 removal; he seeks enforcement of mandatory statutory commands governing age  
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1 determinations and custody of unaccompanied noncitizen children. When the agency  
2 “has failed to exercise discretion altogether,” or has “acted in clear violation of a  
3 statutory mandate,” habeas review is available. See *Singh v. Holder*, 638 F.3d 1196,  
4 1201–02 (9th Cir. 2011).

6 33. Congress enacted the TVPRA to protect unaccompanied alien children (UAC)  
7 from exploitation and to ensure they receive appropriate care. Regardless of  
8 removability, petitioner is a UAC under 8 U.S.C. § 1232, and must be treated  
9 accordingly. The statute’s protections include: mandatory transfer of UACs to  
10 HHS/ORR custody within 72 hours of designation, 8 U.S.C. § 1232(b)(3); placement  
11 in the “least restrictive setting that is in the best interest of the child,” *Id.* §  
12 1232(c)(2)(A); access to legal representation, *Id.* § 1232(c)(5); and eligibility to  
13 pursue asylum before USCIS rather than an immigration judge. *Id.* § 1158(b)(3)(C).

17 34. The statute mandates a specific framework for age determinations. Section  
18 1232(b)(4) provides: “The Secretary of Health and Human Services, in consultation  
19 with the Secretary of Homeland Security, shall develop procedures to make a prompt  
20 determination of the age of an alien, which shall be used by the Secretary of  
21 Homeland Security and the Secretary of Health and Human Services for children in  
22 their respective custody. At a minimum, these procedures **shall take into account**  
23 **multiple forms of evidence, including the non-exclusive use of radiographs**, to  
24 determine the age of the unaccompanied alien.” 8 U.S.C. § 1232(b)(4) (emphasis  
25 added).  
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1 35. The ORR Policy Guide implementing § 1232(b)(4) further specifies: “Dental  
2 maturity assessments using radiographs may be used to determine age, **but only in**  
3 **conjunction with other evidence.**” ORR Policy Guide § 1.6. **Ex. F.** It further states  
4 that if an individual’s probability of being 18 or older is 75% or greater under a  
5 medical assessment, ORR may refer the individual to DHS only “**and this evidence**  
6 **has been considered in conjunction with the totality of the evidence.**” *Id.*  
7 (emphasis added).  
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10 36. Under the TVPRA and implementing guidance, age determinations must be  
11 made based on “the totality of all available evidence.” ORR Policy Guide § 1.6. *Id.*  
12 Permissible forms of evidence include: (1) official government-issued identity  
13 documents; (2) reliable records indicating date of birth; (3) statements by individuals  
14 who can credibly attest to the UAC’s age; and (4) medical assessments but only  
15 when other information is inconclusive, and only in conjunction with other evidence.  
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18 37. A birth certificate, particularly a certified birth certificate, constitutes the most  
19 direct and probative form of evidence of a person’s age. Where the government  
20 seeks to discount such a certificate, it must provide specific, articulable evidence of  
21 unreliability, not mere speculation or generalization. **Ex. J, *N.B. v. Barr*, 2019 WL**  
22 **4849175**, at \*12 (“Respondents cannot rely solely on speculation to conclude that  
23 [petitioner] disposed of his . . . passport to conceal that he is not a minor.”); *Id.* at  
24 \*13 (“In the absence of any indications that [petitioner]’s . . . certificate in particular  
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1 is suspect or fraudulent, the Court determines that Respondents impermissibly relied  
2 on the generalization that all [country]’s . . . certificates are suspect.”).

## 3 4 5 **VII. CLAIMS FOR RELIEF**

### 6 **FIRST CAUSE OF ACTION**

#### 7 **Violation of the Trafficking Victims Protection Reauthorization Act, Exclusive** 8 **and Unlawful Reliance on Dental Radiograph (8 U.S.C. § 1232(b)(4))**

9 38. Suhayb re-alleges and incorporates by reference all preceding paragraphs.

10 39. The TVPRA sets out a specific, mandatory framework for age determinations  
11 of potential unaccompanied noncitizen children. It requires that age determinations  
12 “take into account multiple forms of evidence, including the **non-exclusive use** of  
13 radiographs, to determine the age of the unaccompanied alien.” 8 U.S.C. §  
14 1232(b)(4) (emphasis added). The statute expressly prohibits exclusive reliance on  
15 radiographic evidence. **Ex. M**, *B.I.C. v. Asher*, 2016 WL 8672760, at \*4 (“[T]he  
16 plain language of the TVPRA requir[es] the non-exclusive use of radiographs.”).

17 40. ORR’s implementing guidance confirms that “all available documents and  
18 statements must be considered” and that any medical assessment “may not be used  
19 as the sole basis” for a finding of adulthood. See ORR Policy Guide § 1.6.” **Ex. F**.


20 41. Courts uniformly agree on this point. In *B.I.C. v. Asher*, the court found a  
21 strong likelihood of a TVPRA violation where ORR relied exclusively on a dental  
22 radiograph showing a 92.55% probability of adulthood, despite the petitioner’s  
23 consistent statements as to his age. *Id.* at \*5 (**Ex. M**). In *L.B. v. Keeton*, the court  
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1 found the TVPRA violated where ORR relied on dental radiographic analysis and  
2 only an official's "nonspecific, unsubstantiated speculation" about "adult behavior",  
3 holding that neither constituted valid "evidence" of adult age. *Id.* at \*4 (Ex. L). In  
4 *I.J. v. Keeton*, the court invalidated an age determination where the age  
5 redetermination memorandum "does not indicate that other evidence was considered  
6 in conjunction with the dental assessment(s)." *Id.* at \*11 (Ex. K). And in *N.B. v.*  
7 *Barr*, this Court (S.D. Cal.) found a "high likelihood that Respondents relied  
8 exclusively on the dental radiograph," resulting in a TVPRA violation, even where  
9 the dental finding was 93.53%, higher than the 87.05% here. *Id.* at \*11 (Ex. J).

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13 42. ICE/ERO's stated basis for treating Suhayb as an adult is exclusively the  
14 dental exam's 87.05% figure. That figure is **lower** than the probability at issue in  
15 *N.B. v. Barr* (93.53%) and in *I.J. v. Keeton* (87.70%), both of which courts found  
16 insufficient. ICE has identified no other evidence it considered in reaching its  
17 determination.  
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20 43. ICE's determination is directly contrary to both the statutory command and the  
21 ORR Policy Guide, which requires that radiographic evidence be used "only in  
22 conjunction with other evidence" and that the 75% probability threshold trigger  
23 transfer to DHS only when "this evidence has been considered in conjunction with  
24 the totality of the evidence." ORR Policy Guide § 1.6 (Ex. F).  
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27 44. Here, Suhayb possesses a certified Ethiopian birth certificate, an Ethiopian  
28 national identification card, and school records, all of which consistently state his

1 date of birth as . Ex. A. These documents are facially valid,  
2 consistent with one another, and have never been found by any agency to be  
3 fraudulent or unreliable. Respondents have not identified any conflicting  
4 documentary evidence, biometric data, or prior inconsistent age claims.  
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6 45. Nonetheless, ICE determined that Suhayb is an adult based solely, or almost  
7 solely, on a forensic dental X-ray purporting to show an 87.05% probability that  
8 Suhayb is 18 years or older. ICE's written age-determination record fails to explain  
9 how it weighed Suhayb's birth certificate and other documentary evidence, and  
10 indeed does not acknowledge those documents at all. ICE has not produced any  
11 record showing that it actually applied the "multiple forms of evidence" standard  
12 mandated by 8 U.S.C. § 1232(b)(4).  
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16 46. ICE's age determination therefore violates the plain text of 8 U.S.C. §  
17 1232(b)(4). By treating a single dental X-ray as outcome-determinative and  
18 disregarding Suhayb's consistent documentary evidence, Respondents acted contrary  
19 to law, exceeded their statutory authority, and rendered Suhayb's ongoing placement  
20 in adult ICE detention unlawful.  
21



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23 **SECOND CAUSE OF ACTION**  
24 **Failure to Apply "Totality of the Evidence" Standard**

25 47. Suhayb re-alleges and incorporates by reference all preceding paragraphs.

26 48. The TVPRA and ORR implementing guidance require that age determinations  
27 be based on "the totality of all available evidence." ORR Policy Guide § 1.6. Ex. F.  
28 This standard requires consideration of all available evidence, including documentary

1 evidence, physical appearance, and statements, not just the evidence most convenient  
2 to the government's desired conclusion.

3  
4 49. Even apart from the statutory requirement that medical testing not be the sole  
5 factor, dental X-ray age assessments are scientifically imprecise and carry wide  
6 confidence intervals. The 87.05% "probability of adulthood" assigned to Suhayb is,  
7 by definition, accompanied by a more than 12% probability that he is under 18 — a  
8 margin of error too large to justify overriding facially valid documentary evidence.  
9 Recent literature has emphasized that such methods are "not sufficiently reliable to  
10 serve as the exclusive basis for legal determinations of chronological age,"  
11 particularly in forensic and immigration contexts. See **Ex. G**, N. Laniado et al, *The*  
12 *use of dental radiographs for age estimation of unaccompanied migrant minors:*  
13 *Scientific and ethical concerns*, 82 J. Public Health Dent 349–351 (2022)(abstract).  
14 Using this inherently probabilistic tool as the sole or decisive basis for denying  
15 TVPRA protections conflicts with both the statute and basic principles of due  
16 process.

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21 50. Suhayb presented a birth certificate establishing his date of birth as   
22  That certificate is the most probative form of evidence of Suhayb's age, it is  
23 a government-issued record and certified by the issuing authority. Courts have held  
24 that a verified birth certificate must be weighed heavily and cannot be discounted  
25 based on speculation or conclusory fraud allegations. **Ex. J**, *N.B. v. Barr*, 2019 WL  
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1 4849175, at \*12-13; **Ex. P**, *Alam v. Keeton*, 2020 WL 5439513, at \*6 (ICE must  
2 evaluate the totality of evidence; conclusory fraud allegations are insufficient).  
3

4 51. Where the government claims that a birth certificate is fraudulent, it bears the  
5 burden of providing specific, articulable evidence, not speculation. **Ex. J**, *N.B. v.*  
6 *Barr*, 2019 WL 4849175, at \*12 (“Respondents cannot rely solely on speculation.”);  
7 *id.* (“[T]he government has not shown what about the document warrants  
8 disregarding its facially certified, sealed, attestations.”). Here, no such showing has  
9 been made.  
10

11 52. By failing to document any consideration of Suhayb’s birth certificate or any  
12 evidence other than the dental radiograph, ICE has failed to apply the required  
13 “totality of the evidence” standard. The age determination is therefore unlawful and  
14 must be set aside.  
15

16 53. To the extent the government argues that conflicting records justify treating  
17 the dental X-ray as dispositive, the law is clear that even genuinely conflicting  
18 records do not relieve the agency of its duty to weigh the totality of evidence. See **Ex.**  
19 **Q**, *C.T.M. v. Moore*, No. 3:20-cv-540-B (BT) (N.D. Tex. July 1, 2020) (petition  
20 denied on facts showing multiple biometrically confirmed conflicting DOBs across  
21 multiple countries and facially inconsistent documents, a dramatically more complex  
22 factual record than what exists here). Unlike *C.T.M.*, there is no evidence here that  
23 Suhayb’s birth certificate is facially inconsistent, no biometric records linking Suhayb  
24 to conflicting age claims in multiple countries, and no credible evidence of systematic  
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1 fabrication. The statutory violation here is the process, ICE considered only the dental  
2 X-ray and documented no consideration of other evidence. *I.J. v. Keeton*, 2019 U.S.  
3 Dist. LEXIS 229193, at \*11 (Ex. K).

4  
5 54. Because ICE's unlawful age determination is the only reason Suhayb remains  
6 in adult ICE custody rather than being immediately transferred to ORR or released to  
7 a vetted sponsor, the statutory violation directly produces his present unlawful  
8 confinement. Correcting the age determination and ordering compliance with 8  
9 U.S.C. § 1232(b)(4) will therefore eliminate the basis for his adult detention. This  
10 makes habeas corpus an appropriate and necessary vehicle to remedy the ongoing  
11 violation of federal law. See *Singh*, 638 F.3d at 1202 (habeas review lies where "the  
12 discretionary process itself was constitutionally flawed or otherwise contrary to  
13 federal law").  
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17 **THIRD CAUSE OF ACTION**  
18 **Scientific Invalidity of Exclusive Dental Radiograph Reliance**

19 55. Suhayb re-alleges and incorporates by reference all preceding paragraphs.

20  
21 56. The government's determination that Suhayb is an adult rests on a  
22 scientifically unsound methodology: using a single dental radiograph as the sole  
23 decisive factor in an age determination. According to the *Journal of Public Health*  
24 *Dentistry*, "Not only has research shown this methodology to be unreliable and  
25 imprecise, but the evidence has shown significant variability in dental development  
26 by chronologic age, race/ethnicity, sex, socioeconomic status, systemic disease,  
27  
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1 nutritional health, and other environmental factors.” **Ex. G.** Scientific research has  
2 demonstrated that dental X-rays cannot determine a specific chronological age.  
3

4 57. Congress was aware of these scientific limitations when it enacted the  
5 TVPRA’s “non-exclusive use of radiographs” requirement. As the House  
6 Appropriations Committee noted, and as the 2009 DHS Office of Inspector General  
7 Report confirmed: “radiographs of a person’s bones or teeth . . . cannot produce a  
8 specific age due to a range of factors affecting an individual’s growth” including  
9 “normal biological variation, cultural and ethnic differences, the timing of puberty,  
10 “normal biological variation, cultural and ethnic differences, the timing of puberty,  
11 diet, genetics, health, and geography.” *B.I.C. v. Asher*, 2016 WL 8672760, at \*4  
12 (quoting 2009 DHS OIG Report) (**Ex. M**). Medical professionals consulted by the  
13 OIG “expressed skepticism that a radiographic exam could be used to discover  
14 specifically whether an individual has attained 18 years of age” and “generally  
15 agreed that radiographic exams could provide a usable age range.” *Id.* (emphasis  
16 added); see also *N.B. v. Barr*, 2019 WL 4849175, at \*10 (quoting same) (**Ex. J**).  
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20 58. The ORR Policy Guide itself acknowledges that “no medical assessment  
21 method can determine an exact age.” ORR Policy Guide § 1.6 (**Ex. F**). A 75%  
22 probability threshold is not a determination that someone *is* an adult; it is a  
23 determination that there is a 75% statistical chance the person may be an adult.  
24

25 59. Suhayb’s dental examination shows an 87.05% probability that he has attained  
26 18 years of age. This means the government’s own chosen instrument acknowledges  
27  
28

1 approximately a **one-in-eight chance that Suhayb is a minor**. This is not the kind  
2 of certainty that justifies detaining a child in an adult facility.  
3

4 60. Furthermore, the statistical models underlying dental age assessment rely on  
5 population-based data that may not be representative of Suhayb's specific ethnic  
6 background: Somali, from the Somali region of Ethiopia. See **Ex. D**, Declaration of  
7 Suhayb Muhumed Dable. The ORR Policy Guide requires that any medical age  
8 assessment "account for the individual's ethnic and genetic background." ORR  
9 Policy Guide § 1.6 (*Id.*). It is unclear whether the dental assessment here adequately  
10 accounted for Suhayb's specific ethnic and genetic background. *R.R. v. Orozco*,  
11 2020 WL 3542333, at \*5 (noting failure to account for ethnic and genetic  
12 background as a procedural deficiency under § 1232(b)(4)) (**Ex. N**). Individuals from  
13 the Somali population may exhibit developmental patterns, in third molar  
14 development specifically, that differ from the reference populations used in standard  
15 forensic dental models.  
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20 61. For these reasons, exclusive reliance on the 87.05% dental radiograph finding  
21 is both scientifically unsound and legally impermissible under the TVPRA.  
22

23 **FOURTH CAUSE OF ACTION**  
24 **Violation of TVPRA's Least Restrictive Setting Requirement (8 U.S.C. §**  
25 **1232(c)(2)(A)-(B))**

26 62. Suhayb re-alleges and incorporates by reference all preceding paragraphs.

27 63. Even if Suhayb had properly "aged out" of ORR custody (which he has not),  
28 the TVPRA continues to impose requirements regarding the conditions of his

1 detention. Section 1232(c)(2)(A) provides that UACs in HHS custody “shall be  
2 promptly placed in the least restrictive setting that is in the best interest of the child.”  
3  
4 Section 1232(c)(2)(B) further specifies that such placements shall be in “the least  
5 restrictive setting that is in the best interest of the child,” with a preference for  
6 placement with a lawful sponsor.  
7

8 64. Suhayb has an available, qualified sponsor, his relative, Ms. Randa Dable, a  
9 U.S. citizen who resides at  **Exhibit H**  
10 includes Ms. Dable’s sponsor letter, government-issued identification, U.S. passport,  
11 proof of residence, and evidence of financial ability. Ms. Dable is willing and able to  
12 assume custody of Suhayb immediately. ORR’s own policies identify placement with  
13 a vetted family sponsor as a preferred, least-restrictive option for unaccompanied  
14 children, further underscoring that Suhayb’s continued detention in an adult ICE  
15 facility is unnecessary and unlawful once his minor status is recognized.  
16  
17

18 65. Courts have recognized that the “least restrictive setting” mandate applies as  
19 an independent basis for relief even where the age determination dispute is ongoing.  
20 *N.B. v. Barr*, 2019 WL 4849175, at \*11 (ordering petitioner to be treated as a minor  
21 for purposes of detention) (**Ex. J**); *L.B. v. Keeton*, 2018 WL 11447076, at \*4  
22 (ordering transfer to ORR juvenile facility) (**Ex. L**).  
23  
24

25 66. Detaining a minor – or a person who may be a minor – in an adult ICE  
26 detention facility, surrounded by unrelated adults, is not “the least restrictive setting  
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1 that is in the best interest of the child.” It constitutes an independent violation of 8  
2 U.S.C. § 1232(c)(2).

3  
4 **FIFTH CAUSE OF ACTION**  
5 **Violation of Substantive and Procedural Due Process**

6 67. Suhayb re-alleges and incorporates by reference all preceding paragraphs.

7 **68. Substantive Due Process:** The Fifth Amendment’s Due Process Clause  
8 prohibits the federal government from depriving a person of liberty through arbitrary  
9 or conscience-shocking conduct. Detaining a child in an adult facility based on a  
10 probabilistic dental X-ray that acknowledges a one-in-eight chance of minority, while  
11 ignoring a certified birth certificate establishing minority, is arbitrary executive action  
12 that shocks the conscience. The Constitution demands more before the government  
13 deprives a minor of liberty.  
14

15  
16 **69. Procedural Due Process:** Suhayb has not been afforded meaningful process  
17 to contest the government’s age determination. The government made its  
18 determination unilaterally, notified counsel by email, and has taken the position that  
19 the dental X-ray is determinative. Suhayb has not been afforded a hearing before a  
20 neutral adjudicator, the opportunity to present countervailing evidence in a formal  
21 proceeding, or a meaningful opportunity to rebut the government’s age determination  
22 before a tribunal. This falls short of the process due a person facing the significant  
23 deprivation of liberty at issue here.  
24  
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26  
27 **70.** Courts have recognized that the absence of meaningful opportunity to contest  
28 age claims, particularly where the stakes involve detention in an adult facility, raises

1 serious due process concerns. *N.B. v. Barr*, 2019 WL 4849175, at \*15 (noting public  
2 interest in “applying federal law correctly” in the context of minor detained without  
3 adequate process) (**Ex. J**).

5 71. Suhayb’s continued detention without a meaningful individualized bond  
6 hearing violates the Due Process Clause of the Fifth Amendment and entitles him to  
7 immediate release.  
8

9  
10 **VIII. PRAYER FOR RELIEF**

11  
12 WHEREFORE, Petitioner Suhayb Dable respectfully requests that this Court:

- 13 1. Assume jurisdiction over this action pursuant to 28 U.S.C. § 2241 and  
14 all other applicable authority.  
15  
16 2. Issue an Order to Show Cause under 28 U.S.C. § 2243 directing  
17 Respondents to show cause, within three days of the filing of this  
18 Petition, why the relief requested herein should not be granted, and set  
19 a hearing on the Order to Show Cause within five days of Respondents’  
20 return.  
21  
22 3. Issue a Writ of Habeas Corpus ordering Suhayb’s **immediate release**  
23 from Respondents’ custody.  
24  
25 4. In the alternative to paragraph 3, order that a bond hearing be held  
26 before this Court at which the government bears the burden of  
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28

1 demonstrating, by clear and convincing evidence, that Suhayb's  
2 continued detention is lawful and warranted.

- 3
- 4 5. Issue a declaratory judgment that Respondents' age determination—  
5 based exclusively on a forensic dental X-ray purporting to show an  
6 87.05% probability of adulthood, and made without consideration of  
7 Suhayb's certified birth certificate or other corroborating evidence—  
8 violated the Trafficking Victims Protection Reauthorization Act, 8  
9 U.S.C. § 1232(b)(4), and is unlawful, invalid, and without legal effect.
- 10
- 11
- 12 6. Issue an order directing Respondents to transfer Suhayb from ICE adult  
13 detention to the custody of the Office of Refugee Resettlement as an  
14 unaccompanied noncitizen child, and to ensure that he is placed in the  
15 least restrictive setting appropriate to his needs, consistent with 8  
16 U.S.C. § 1232(c)(2), pending completion of a lawful age determination.
- 17
- 18
- 19 7. In the alternative to paragraph 6, if the Court declines to order  
20 immediate transfer to ORR custody, issue an order directing  
21 Respondents to recognize and treat Suhayb as a minor for all purposes  
22 under the TVPRA and related authorities, and to release him forthwith  
23 to his identified family sponsor, subject to reasonable conditions of  
24 supervision, consistent with the least-restrictive-setting requirement  
25 governing custody of unaccompanied noncitizen children.  
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- 1 8. Issue preliminary and permanent injunctive relief prohibiting  
2 Respondents from using, relying on, or referencing the unlawful age  
3 determination in any past, pending, or future immigration proceedings,  
4 including Suhayb's removal proceedings, any asylum or related  
5 protection adjudication, any Special Immigrant Juvenile Status-related  
6 proceedings, and any bond, custody, or parole determination.  
7
- 9 9. Order Respondents to conduct a new, TVPRA-compliant age  
10 determination that fully complies with 8 U.S.C. § 1232(b)(4); evaluates  
11 the totality of the evidence; considers multiple forms of probative  
12 evidence, including but not limited to Suhayb's certified birth  
13 certificate and supporting records; and contemporaneously documents  
14 Respondents' assessment of each form of evidence and the reasons for  
15 the ultimate age determination.  
16
- 18 10. Enjoin Respondents from transferring Suhayb out of this District, or  
19 otherwise removing him from the jurisdiction of this Court, during the  
20 pendency of this action without prior notice to the Court and Suhayb's  
21 counsel and an opportunity to be heard.  
22
- 24 11. Award reasonable attorneys' fees and costs under the Equal Access to  
25 Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, and any other  
26 applicable authority; and  
27
- 28 12. Grant any other relief that the Court deems just and proper.

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DATED: April 14, 2026

Respectfully submitted,

/s/ Christina Tong

Christina Liao Tong (CA Bar No. 337433)

Attorney for Petitioner