

1 ALVARO M. HUERTA (CA SBN 274787)  
2 *ahuerta@immdef.org*  
3 CARSON ADRIANNA SCOTT (CA SBN 337102)  
4 *cscott@immdef.org*  
5 ALISON STEFFEL (CA SBN 346370)  
6 *asteffel@immdef.org*  
7 ALEX FOX (CA RLAA 805271; NY SBN 6048003)  
8 *afox@immdef.org*  
9 IMMIGRANT DEFENDERS LAW CENTER  
634 S. Spring St., 10th Fl.  
Los Angeles, CA 90014  
Telephone: (213) 634-7601  
Facsimile: (213) 282-3133

10 *Pro Bono Attorneys for Petitioner*

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

12 O.E.O.,

13 Petitioner,

14 vs.

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

Case No.

**PETITIONER'S NOTICE OF  
MOTION; MOTION FOR A  
TEMPORARY RESTRAINING  
ORDER OR PRELIMINARY  
INJUNCTION; AND  
MEMORANDUM OF POINTS  
AUTHORITIES IN SUPPORT  
THEREOF**

Date: TBD  
Time: TBD  
Dept: TBD  
Judge: TBD  
Trial Date: TBD  
Date Action Filed: June 30, 2025

**REDACTED VERSION**

**NOTICE OF MOTION AND MOTION FOR A TEMPORARY RESTRAINING ORDER OR 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 temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b) or, in the alternative, for a preliminary injunction pursuant to Federal Rule of Civil Procedure 65(a).

O.E.O., a fifteen-year-old unaccompanied child whom Respondents have unlawfully classified as an adult, has now been unlawfully detained for forty days at the infamous Eloy Detention Center in Arizona. Respondents violated their obligations under the Trafficking Victims Protection Reauthorization Act (“TVPRA”), which requires that they use age determination procedures that “take into account multiple forms of evidence, including the non-exclusive use of radiographs” and “promptly place[ unaccompanied children] in the least restrictive setting that is in the best interest of the child.” 8 U.S.C. § 1232(b)(4), (c)(2)(A). On May 21, 2025, Respondent ORR issued a Memo of Age Re-Determination that failed to comply with the TVPRA and the agencies’ own internal policies and procedures governing age determinations. On May 22, 2025, ICE used that invalid age re-determination memo to unlawfully detain O.E.O. in an adult facility, violating the TVPRA’s command to place unaccompanied children in the least restrictive setting. Respondents have also unlawfully issued an expedited removal order to O.E.O., despite having no factual basis under which to do so. *See* 8 U.S.C. § (a)(5)(D). Accordingly, Petitioner moves this Court to:

1. Declare that ICE’s and ORR’s age redetermination failed to take multiple pieces

1 of evidence into account, in violation of 8 U.S.C. § 1232(b)(4), and order that  
2 ICE and ORR immediately rescind the May 21 Memo.

3 2. Enjoin Respondents from applying the non-compliant age determinations as the  
4 basis for the expedited removal, custody determinations, or other immigration  
5 relief made by the agency until ORR makes an age determination in accordance  
6 with 8 U.S.C. 1232(b)(4) and ORR's Policy Guidelines.

7 3. Enjoin Respondents from causing Petitioner any greater harm during the  
8 pendency of this litigation, such as by transferring him anywhere outside of the  
9 jurisdiction of the District of Arizona or the Central District of California, away  
10 from his counsel.

11 4. Order ORR to complete an age determination in compliance with 8 U.S.C.  
12 1232(b)(4) and its Policy Guidelines within forty-eight hours of the date of this  
13 Order, in compliance with 8 U.S.C. §1232(a)(4).

14 5. Order O.E.O.'s transfer to ORR custody within the next seventy-two hours, in  
15 compliance with 8 U.S.C 1232(b)(3), and that ORR release him to his sponsor  
16 immediately and, in any case, no later than 3 days after his transfer to ORR  
17 custody, in compliance with 8 U.S.C. § 1232(c)(2)(B), which requires prompt  
18 release to the least restrictive setting.

19 The motion is based upon this notice of motion; the memorandum of points and  
20 authorities in support thereof that follows; the proposed order filed concurrently herewith;  
21 the pleadings, records, and papers on file in this action; oral argument of counsel; and any  
22 other matters properly before the Court.  
23

24 Dated: June 30, 2025

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 fifteen-year-old child from Afghanistan currently detained at Eloy Detention Center (“Eloy”), located in Eloy, Arizona. Upon entering the United States, O.E.O. was designated as an unaccompanied child and placed in a children’s foster care facility in Fullerton, California, under the custody of the Office of Refugee Resettlement (“ORR”) as required by federal law. Despite clear evidence of his minority, Respondents subsequently re-determined that O.E.O. was over eighteen years old without considering the totality of the circumstances and evidence, in violation of the TVPRA and their own policies governing age determinations. Respondents then illegally moved O.E.O. to an adult Immigration and Customs Enforcement (“ICE”) detention facility. Federal law requires that unaccompanied children be placed in the least restrictive setting. Respondents, however, continue to detain a fifteen-year-old child at a former prison located hundreds of miles away from his immigration attorney and only family member in the United States.

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.

## STATEMENT OF FACTS<sup>1</sup>

### **I. O.E.O. Is Seeking Relief from Unlawful Detention**

O.E.O. is a fifteen-year-old Afghan national who has now been unlawfully detained for forty days by ICE, an agency of the Department of Homeland Security (“DHS”), as the result of an age re-determination made by ORR. O.E.O. asks this Court to order that Respondents rescind their age re-determination and release O.E.O. to the

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<sup>1</sup> Petitioner incorporates the facts stated in his Petition for Writ of Habeas Corpus to the present motion for a temporary restraining order.

1 least restrictive setting, to the custody of his uncle. Absent intervention from this court,  
 2 O.E.O., a child, will remain at Eloy, an adult ICE facility infamously known as the  
 3 “deadliest immigration detention center in the U.S.”<sup>2</sup>

## 4 **II. O.E.O. Fled Afghanistan After Being Threatened with Death by the Taliban**

5 O.E.O.’s father was the owner of a chocolate company in Mazar-I-Sharif, that had  
 6 long supplied chocolate to the Afghan military officers and foreign embassies. O.E.O.  
 7 Decl. ¶ 3. But after the Taliban took control of Afghanistan, O.E.O.’s father was  
 8 repeatedly threatened, physically attacked, and his chocolate company was burned down.  
 9 *Id.* O.E.O.’s father was forced to flee Afghanistan. *Id.*

11 Last year, the Taliban started targeting O.E.O. and forced him to leave his school  
 12 and enroll in a religious extremist boarding school. *Id.* at ¶ 5. The Taliban threatened to  
 13 kill O.E.O. if he left the school. *Id.* O.E.O.’s family was able to help O.E.O. escape the  
 14 boarding school. *Id.* His sold a building to buy O.E.O. a high-quality fake passport and  
 15 national ID with a false birth date so that O.E.O. could flee. *Id.* at ¶ 6. O.E.O. entered  
 16 the United States on November 12, 2024, using the U.S. Customs and Border Protection  
 17 (“CBP”) One application. *Id.* at ¶ 8. O.E.O. immediately told officials that his passport  
 18 and national ID were fake and that his real birth date is [REDACTED]. *Id.* Since his  
 19 departure, the Taliban has come to O.E.O.’s family home every few days to look for  
 20 O.E.O. *See* Ex. Y, Declaration of S.O., June 10, 2025. O.E.O. is certain the Taliban will  
 21 kill him if he returns. O.E.O. Decl. at ¶ 21.

24  
 25 <sup>2</sup> Detention Watch Network & Florence Immigrant & Refugee Rights Project, *Anthology*  
 26 *of Abuse: A Legacy of Failed Oversight and Death at the Eloy Detention Center* at 2  
 27 (2024), available at  
 28 [https://www.detentionwatchnetwork.org/sites/default/files/reports/Anthology%20of%20Abuse%20-%20A%20Legacy%20of%20Failed%20Oversight%20and%20Death%20at%20the%20Eloy%20Detention%20Center\\_.pdf](https://www.detentionwatchnetwork.org/sites/default/files/reports/Anthology%20of%20Abuse%20-%20A%20Legacy%20of%20Failed%20Oversight%20and%20Death%20at%20the%20Eloy%20Detention%20Center_.pdf) (last visited June 30, 2025).

1 **III. ORR and ICE Have Unlawfully Age Re-Determined O.E.O.**

2 O.E.O. was correctly designated an unaccompanied child and transferred to the  
3 custody of ORR. O.E.O. Decl. ¶ 8. O.E.O. was placed at Crittenton Foster Care and  
4 Foster Family Agency. *Id.* at ¶ 9. On November 16, 2024, CBP provided ORR with  
5 O.E.O.'s fake passport and national I.D. card, which list O.E.O.'s birthday as [REDACTED],  
6 [REDACTED]. *See* Ex. B, May 21, 2025 ORR Memo of Age Re-Determination ("May 21  
7 Memo"); *see also* Ex. M, Fake Passport; Ex. N, Fake National ID Card. Federal Field  
8 Specialist Lucibel Gast ("Ms. Gast") sent those documents to the ORR Verification  
9 Team, which sent photographs of the documents to the Afghanistan Affairs Unit  
10 ("AAU") for verification. *See* Ex. A, May 1, 2025 Memo of Age Re-Determination  
11 ("May 1 Memo").  
12

13 On December 11, 2023, Crittenton Shelter received O.E.O.'s Tazkira, another type  
14 of Afghan identity document, which lists his birthday as [REDACTED]. *See* Ex. B,  
15 May 21 Memo; *see also* Ex. C, O.E.O.'s Tazkira. O.E.O.'s mother again stated that  
16 O.E.O.'s correct date of birth is [REDACTED]. *See* Ex. B, May 21 Memo. On  
17 January 2, 2025, a request was made to verify the Tazkira, and there was no response. *Id.*  
18

19 On February 3, 2025, ORR received an email replying to their November 18, 2024  
20 request. *See id.* The cultural advisors at the AAU stated that "it is challenging to fully  
21 accept these documents as genuine without having the hard copies for extra  
22 examination." Ex. O, Feb. 3, 2025 Email Correspondence "Afghan-Document  
23 Verification Request." If they had the passport and national ID in their "possession, it  
24 would be much easier to determine authenticity, but with looking only into photos, it is  
25 hard to come up with a conclusion." *Id.*  
26  
27  
28

1 On March 21, 2025, a second request was made to verify the Tazkira that O.E.O.'s  
2 mother sent in December 2024. *See* Ex B, May 21 Memo. On April 21, 2025, a person  
3 named Emily N. Benson replied via email to that request and stated "AAU advised that  
4 the minor's passport and national ID appear genuine. The Tazkira, specifically the DOB  
5 section, appear to be digitally manipulated and fraudulent." Ex. Q, April 21, 2025, Email  
6 Correspondence "Afghanistan-Document Verification Request." Unlike the February 3,  
7 2025 email, this email did not contain the direct quote from the AAU. *Compare* Ex. O  
8 with Ex. Q.

10 In March of 2025, Immigrant Defenders Law Center ("ImmDef") took on  
11 O.E.O.'s case pro bono and assigned Alex Fox ("Ms. Fox") as his attorney. Fox Decl. ¶  
12 5. Ms. Fox assisted O.E.O. with filing a TVPRA-asylum application with USCIS. *Id.* at  
13 ¶ 10. On April 15, 2025, Ms. Fox represented O.E.O. before the Santa Ana Immigration  
14 Court and the immigration judge terminated O.E.O.'s removal proceedings. *Id.* at ¶ 11.

16 On May 1, 2025, Ms. Fox was informed by ORR that they had conducted an age  
17 determination and concluded that O.E.O. was an adult. *Id.* Marion Donovan-Kaloust,  
18 Director of Legal Services at ImmDef, was able to contact Ms. Gast who made the age  
19 re-determination, and asked that she reconsider all of the evidence of his minority. *Id.* at  
20 ¶ 12. O.E.O. was returned to Crittenton that night, but isolated from his peers and  
21 prohibited from attending school while Ms. Gast re-considered her age re-determination  
22 for the next three weeks. O.E.O. Decl. ¶ 14, 17. After this day, O.E.O. started suffering  
23 anxiety, depression, panic attacks, and sleep issues, and was prescribed medication to  
24 help his symptoms. *Id.* at ¶ 15, 17.

1 On May 8, 2025, O.E.O. was taken to the dentist for an assessment to determine  
 2 his age. *Id.* at ¶ 16. On May 19, 2025, ORR received the examination results from Dr.  
 3 Senn. *See* Ex. L, Dental Age Assessment Report. The examination employed the  
 4 Demirjian method<sup>3</sup> and claimed that O.E.O. was between the ages of sixteen and twenty-  
 5 two, with a 77.5% “empirical statistical probability” that O.E.O. is over eighteen years  
 6 old. *Id.*

8 Between May 2, 2025, and May 22, 2025, ORR received the following pieces of  
 9 evidence corroborating O.E.O.’s minority: (1) O.E.O.’s school record, stamped by the  
 10 Ministry of Education; (2) a declaration from Dr. Fais, the doctor who delivered O.E.O.;  
 11 (3) O.E.O.’s older sister’s national ID card, showing her date of birth as [REDACTED];  
 12 (4) statements from a country conditions expert on falsifying documents to travel outside  
 13 of Afghanistan; (6) four declarations from his siblings and uncle. *See* Ex. P, May 8, 2025  
 14 Email Correspondence between Lucibel Gast and Alex Fox; *see also* Fox Decl ¶ 16; Ex.  
 15 F, G, I–K; Pet. at ¶¶ 35–38.

17 On May 21, 2025, Ms. Gast issued a second Memo of Age Re-Determination,  
 18 claiming to have considered the following evidence of O.E.O.’s age: (1) the fraudulent  
 19 passport and national identification card that O.E.O. used to flee the Taliban; (2) O.E.O.’s  
 20 statement that he used false documents to travel; (3) two statements from O.E.O.’s  
 21 mother “confirm[ing] that his date of birth (DOB) is [REDACTED]; (4) O.E.O.’s  
 22

24  
 25 <sup>3</sup> The Demirjian method is known to be unreliable and inaccurate for many reasons, but  
 26 notably here for its great variability between people of different ethnicities. *See* Chudong  
 27 Wang, et al., *Preliminary study on genetic factors related to Demirjian’s tooth age*  
 28 *estimation method based on genome-wide association analysis*, 137 Int’l J. Legal  
 Medicine 1161, 1179 (2023), available at  
<https://link.springer.com/article/10.1007/s00414-023-03008-y> (last visited June 73, 2025)  
 (finding that applying different phenotypes in Demirjian method analysis led to different  
 results, and the role of genetics in tooth age inference needs to be studied further).

1 Tazkira with his correct date of birth, [REDACTED]; (5) medical records (statement  
2 from O.E.O.'s doctor); (6) school records; and (7) dental forensic exam. *See* Ex. B, May  
3 21 Memo.

4 Despite the overwhelming evidence establishing that O.E.O. was born on [REDACTED]

5 [REDACTED], and is fifteen years old, Ms. Gast concluded the following:

6  
7 Given the totality of evidence – including the passport and national identification  
8 card, the finding of digital manipulation on the Tazkira, the inability to  
9 authenticate school and medical records provided by [O.E.O.'s] mother, and the  
10 dental age assessment indicating a 77.55% probability that [O.E.O.] is 18 years or  
11 older – and in accordance with ORR policy, it is determined that the  
12 aforementioned individual is 18 years of age or older. As such, [O.E.O.] is no  
13 longer eligible for placement in an ORR funded facility for minors.

14 *Id.* Of the seven types of evidence that Ms. Gast claimed to have considered, she either  
15 inaccurately represented the evidence, and thus improperly rejected it, or she failed to  
16 consider it all together. *See id.*; *see also* Pet. at ¶¶ 42–44; *infra* at I.A.–C.

17 Ms. Fox was notified that same day of Ms. Gast's May 21 Memo. Fox Decl. ¶ 17.  
18 On May 22, 2025, Ms. Fox went to Crittenton Shelter to ask that O.E.O. be released on  
19 his own recognizance so that he could be reunited with his uncle. *Id.* ¶ 18. ICE agents  
20 ignored Ms. Fox's request, and instead handcuffed O.E.O. and drove him to a federal  
21 building at 300 N. Los Angeles Street, Los Angeles, California, for processing. O.E.O.  
22 Decl. ¶ 19; Fox Decl. ¶ 18. Ms. Fox waited four hours before she was finally able to  
23 speak with O.E.O. Fox Decl. ¶ 19. ICE agents prohibited them from speaking privately,  
24 denied O.E.O. his medication, failed to give him food or water, and refused to give him  
25 his jacket. *See* O.E.O. Decl. ¶ 19; Fox Decl. at ¶ 19.

26 That evening, O.E.O. was driven to the Florence Detention Center in Florence,  
27 Arizona. O.E.O. Decl. ¶ 19. ICE transported O.E.O. in a van with seven adults and he  
28

1 was only given one small water bottle the entire ride. *Id.* The drive took a long time  
2 because ICE made many stops along the way, and O.E.O. was in handcuffs the entire  
3 drive. *Id.* On May 24, 2025, O.E.O. was transferred to Eloy Detention Center. *Id.*  
4 O.E.O. called his attorney and told her that he did not feel safe there as a minor and was  
5 not sure he would ever be able to sleep there. Fox Decl. ¶ 22; O.E.O. Decl. ¶ 20 (“I am  
6 afraid of the other men in here with me. They are much older than I am.”).

8 On June 2, 2025, Ms. Fox sent Deportation Officer Ramirez a demand letter  
9 asking ICE to comply with their obligations to conduct their own review of the evidence  
10 of O.E.O.’s minority. Fox Decl. ¶ 24. That same day, ICE informed Ms. Fox that O.E.O.  
11 was reprocessed and is now subject to an expedited removal order. *Id.* at ¶ 25. On June  
12 3, 2025, Officer Hoffman called Ms. Fox who told her that she did not know what she  
13 was talking about because she had never been to Afghanistan. *Id.* at ¶ 26. The Officer  
14 then told her that he knows that O.E.O. is an adult and indicated he would not conduct an  
15 inquiry into his age as required by statute. *Id.* at ¶ 26.

17 On June 4, 2025, Ms. Fox sent another demand letter, this time to Deputy Field  
18 Office Director Jason Ciliberti, Assistant Field Office Director Brian Ortega, Assistant  
19 Field Office Director Karin Kinghorn, Supervising Detention and Deportation Officer  
20 Chris Hoffman, and Deputy Chief Counsel at Eloy Matthew Hanson. *See* Fox Decl. ¶ 27;  
22 *see also* Ex. X, ICE Demand Letter, June 4, 2025. On June 5, 2025, Officer Hoffman  
23 replied to Ms. Fox’s second demand letter with the following: “After further review of  
24 submitted evidence, we have determined that the subject is an adult.” *Id.* at ¶ 28. That  
25 same day, O.E.O. called Ms. Fox and informed her that an officer harassed him about his  
26  
27  
28

1 age and told him he was lying about his age. *Id.* at ¶ 30. This caused O.E.O., significant  
 2 distress. *Id.*

3 O.E.O. has now been held for forty days in overcrowded cells with adults at the  
 4 Eloy Detention Center. *See* O.E.O. Decl. ¶ 20. Since being detained, O.E.O. has had  
 5 limited communication with his family, all of whom are in Afghanistan. *Id.* He has  
 6 suffered from extreme stress and panic attacks and the guards have not permitted him to  
 7 take the medication his doctor prescribed for his anxiety. *Id.* He has also suffered abuse  
 8 at the hands of at least one adult detainee at Eloy and fears for his safety. *Id.* at ¶ 22.

#### 10 **IV. Legal Framework Governing the Care of Unaccompanied Children**

11 The TVPRA expressly provides unaccompanied children (1) the right to prompt  
 12 placement in the “least restrictive setting that is in the best interest of the child”; (2) the  
 13 right to age determination procedures that “take into account multiple forms of evidence,  
 14 including the non-exclusive use of radiographs”; (3) the right to have USCIS exercise  
 15 initial jurisdiction over their TVPRA asylum application; and (4) prohibits the use of  
 16 expedited removal for unaccompanied children. 8 U.S.C. §§ 1232(a)(2)(B), (a)(3),  
 17 (a)(5)(D), (b)(4), (c)(2)(A). HHS and DHS have both developed their own policies and  
 18 procedures to ensure compliance with the TVPRA. Importantly, ORR and ICE have  
 19 developed internal guidance governing age determinations of unaccompanied children, as  
 20 well as placement of these children in the least restrictive setting.<sup>4</sup>

25 <sup>4</sup> *See* ORR Policy Guidance UC Guide § 1.6, Determining the Age of an Individual  
 26 without Lawful Immigration Status, available at [https://acf.gov/orr/policy-](https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.6)  
 27 [guidance/unaccompanied-children-program-policy-guide-section-1#1.6](https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.6) (last visited June  
 28 27, 2025) (hereinafter “ORR Policy Guidance”); *see also* ERO Juvenile Coordinator  
 Handbook §3.1.2, available at  
[https://www.ice.gov/doclib/foia/policy/handbookFOJC\\_Nov2021.pdf](https://www.ice.gov/doclib/foia/policy/handbookFOJC_Nov2021.pdf) (last visited June  
 27, 2025) (hereinafter “ERO Juvenile Coordinator Handbook”).

Both agencies' internal age determination procedures require that "the totality of all available evidence" and the "totality of the circumstances" be considered in an age determination. ORR Policy Guidance §1.6; *see also* ERO Juvenile Coordinator Handbook § 3.1.2. "[E]ach case must be evaluated carefully based on the totality of all available evidence, including the statement[s]" of the unaccompanied child, and individuals with "personal knowledge of the unaccompanied . . . child's age." ORR Policy Guidance, § 1.6.2 The agencies must consider evidence such as official government-issued documents; documentation such as baptismal certificates, school records, and medical records; and "statements from parents or other relatives" or "other persons apprehended with the individual." *Id.*

Further, "[d]ental maturity assessments using radiographs may be used to determine age, but only in conjunction with other evidence." *Id.* Dental assessments must also take into consideration the individual's ethnic and genetic background. *Id.*; *see also* ERO Juvenile Coordinator Handbook § 3.1.2. ORR may only refer an unaccompanied minor to DHS if "the individual's estimated probability of being 18 or older is 75 percent or greater, *and this evidence has been considered in conjunction with the totality of the evidence.*" ORR Policy Guidance, § 1.6.2 (emphasis added). Where the results are "[a]mbiguous, debatable, or borderline forensic examination results are resolved in favor of finding the individual is a child." *Id.*

### STANDARD OF REVIEW

A temporary restraining order is warranted where a Petitioner establishes that (1) he is likely to succeed on the merits of their claim; (2) he will suffer irreparable harm absent relief; (3) the balance of the equities tips in his favor; and (4) an injunction is in the public interest. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir.

2011) (citing *Winter v. Nat'l Res. Def. Council*, 555 U.S. 7, 20 (2008)); *see also* *Stuhlbarg*, 240 F.3d at 839 n.7 (applying preliminary injunction standard to a temporary restraining order). Where the government is the Respondent, the balance of the equities and public interest factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). A sliding scale test may be applied and an injunction should be issued when there is a stronger showing on the balance of hardships, even if there are “serious questions on the merits . . . so long as the plaintiff also shows a likelihood of irreparable harm and that the injunction is in the public interest.” *All. for the Wild Rockies*, 632 F.3d at 1131; *see also Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F. 4th 1180, 1190 (9th Cir. 2024).

## ARGUMENT

O.E.O. is actively suffering irreparable harm because Respondents are unlawfully detaining O.E.O., a fifteen-year-old unaccompanied child, in an ICE detention facility notorious for poor conditions. *See* O.E.O. Decl. ¶ 20–22. The balance of the equities and the public interest favor releasing O.E.O. because the government has no legitimate interest in detaining a child in an adult prison, in violation of the law. O.E.O. has satisfied the criteria of a TRO and merits relief for the reasons argued below.

### **I. Respondents Have Acted Unlawfully**

Respondents have flouted their non-discretionary TVPRA obligations to O.E.O. in three instances: (1) ORR’s May 21, 2025 Memo of Age Re-Determination, which mischaracterized and ignored evidence, *see* Pet. at ¶¶ 24–46; (2) ICE’s May 22, 2025 decision to detain O.E.O., a minor, in an adult detention facility, *see* Pet. at ¶¶ 46–58; and (3) ICE’s failure to conduct an age determination that complies with the ERO Juvenile

Coordinator Handbook § 3.1.2, *see* Pet. at ¶¶ 49–52. Each violation and its consequences are detailed below.

**A. ORR’s May 21, 2025 Memo of Age Re-Determination Was Flawed**

Ms. Gast’s May 21, 2025 Memo of Age Re-Determination failed to consider the totality of the circumstance or evidence of O.E.O.’s age, as is required by the TVPRA, 8 U.S.C. § 1232(b)(4), and ORR Policy Guidance, § 1.6.2, in four main ways.

**First**, Ms. Gast failed altogether to consider five pieces of evidence in support of O.E.O.’s minority. *See* Pet. ¶ 43. On May 8, 2025, O.E.O. submitted four declarations from his family members and the National Identity Document (“ID”) of his sister, B.O. Each declaration testifies as to O.E.O.’s minority and his date of birth being [REDACTED], [REDACTED]. *See* Exs. F, G, I–K. Not one of those declarations was mentioned in the May 21, 2025 Age Determination Memo. *Compare* Ex. B, May 21 Memo *with* Exs. F, G, I, J (family declarations testifying to O.E.O.’s minority). Also absent from the memo is any mention of B.O.’s National ID, which shows her age as March 18, 2003, making it physically impossible for O.E.O. to have been born [REDACTED]. *Compare* Ex. K, B.O.’s National ID Card *with* Ex. B, May 21 Memo (claiming O.E.O.’s date of birth is [REDACTED]). Ms. Gast’s failure to consider these “statements from parents and other relatives” and “official government-issued documents” directly violates ORR Policy Guidance § 1.6.2, which requires the agency consider exactly this type of evidence.

**Second**, Respondents failed to consider the “totality of the circumstances” and thus improperly rejected O.E.O.’s school records and the statement from the doctor who delivered O.E.O., for reasons entirely untethered to their statutory obligations.

*School Record*: Ms. Gast rejected O.E.O.’s school records because they purportedly lacked “attestation from the ministry of education” or “verification by the

1 ministry of foreign affairs.” *See* Ex. B, May 21 Memo. To be sure, neither the TVPRA,  
 2 nor the internal policies and procedures of ORR require “attestation” or “verification.”  
 3 *See* ORR Policy Guidance §1.6. In fact, requiring O.E.O. to obtain such authentication  
 4 runs counter to ORR’s obligation to “take into account the totality of the circumstances  
 5 and evidence,” and would put O.E.O.’s family at grave risk. *Id.*; *see also* Ex. Y, Decl. of  
 6 S.O. (June 10, 2025) (stating that the Taliban continues to search for O.E.O). O.E.O.’s  
 7 asylum claim is based in part on the fact that the Taliban forced O.E.O. to stop attending  
 8 the school of his choice—i.e., the school that provided his transcript—and forced him to  
 9 attend their extremist religious boarding school. *See* O.E.O Decl. ¶ 5. Asking O.E.O.’s  
 10 family to obtain an “attestation from the ministry of education” and the “ministry of  
 11 foreign affairs,” both of which are now run by the Taliban, would be asking them to put  
 12 their head in the lion’s mouth. *See* Ex. B, May 21 Memo.

15 *Doctor Faiz’s Declaration:* Ms. Gast also erroneously rejected O.E.O.’s “medical  
 16 record” because it was written on a prescription pad “with the birth note written in place  
 17 of where a prescription may normally be written.” *See* Ex. B, May 21 Memo. But this  
 18 evidence is a declaration, not a “medical record,” and the ORR Policy Guidance § 1.6,  
 19 does not require a specific format or type of paper be used for a declaration. Further, Ms.  
 20 Gast fails to consider that the declaration includes the doctor’s signature and his  
 21 fingerprint, which should suffice to authenticate the document as a sworn statement from  
 22 O.E.O.’s doctor. Ex. E, Dr. Faiz Decl.

24 ***Third,*** Ms. Gast failed to consider the totality of the circumstances or the evidence  
 25 with respect to his O.E.O.’s fake passport, fake national identity card, and his valid  
 26 Tazkira, and misrepresented the statements of the Afghanistan Affairs Unit (“AAU”).  
 27  
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1 See Ex. B, May 21 Memo; *see also* Ex. O, Feb. 3, 2025 Email Correspondence  
2 “Afghanistan-Document Verification Request” (“Feb. 3 AAU Verification Email”). Ms.  
3 Gast claimed that the AAU “confirmed that both the passport and national ID appeared to  
4 be genuine and valid.” Ex. B, May 21 Memo. Not so. *See* Ex. O, Feb. 3 AAU  
5 Verification Email. What Ms. Gast’s May 21 Memo conveniently omitted from the  
6 email communications with the AAU was their clear conclusion to the contrary: “[I]t is  
7 challenging to fully accept these documents as genuine without having hard copies for  
8 extra examination.” *Id.* The AAU “recommended that the peer agencies in possession”  
9 of the documents “use an MRZ reader to verify and authenticate” the documents. *Id.*  
10 ORR did not do so. *See* Ex. B, May 21 Memo (making no mention of having used an  
11 MRZ reader to verify and authenticate O.E.O.’s documents).  
12

13  
14 Further, it should come as no surprise that the photographs of the fraudulent  
15 documents *appear* real. O.E.O.’s family sold a building to pay for high-quality,  
16 fraudulent documents so that O.E.O. would be able to flee the country. O.E.O. Decl. ¶ 6;  
17 *see also* Ex. Y Decl. of S.O. (June 10, 2025). Ms. Fox also supplemented the evidentiary  
18 record with a statement from a country conditions expert, Mr. Ansar Ul Haq, who stated  
19 that it is “not uncommon for individuals in Afghanistan to alter or misreport their age on  
20 official documents, especially when seeking to leave the country under duress.” *See* Ex.  
21 P, May 8, 2025 Email Correspondence between Lucibel Gast and Alex Fox. As was the  
22 case for O.E.O., “the manipulation of age is often a survival strategy, not an intent to  
23 deceive immigration authorities, but rather a means of escaping persecution.” *Id.* Since  
24 his presentation at the border, O.E.O. has consistently stated to U.S. officials and ORR  
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1 that the passport and national identity card he traveled with were fraudulent and only  
 2 obtained so that he could flee persecution from the Taliban. O.E.O. Decl. ¶ 6, 8. .

3 **Fourth**, and finally, ORR also violated its own policies by relying on a dental  
 4 examination to determine O.E.O.'s age. Dr. Senn's Dental Age Assessment Report  
 5 employed the Demirjian method and claimed that O.E.O. is between the ages of sixteen  
 6 and twenty-two, with a 77.5% "empirical statistical probability" that O.E.O. "has attained  
 7 18 years of age." See Ex. L, Dental Age Assessment Report. In support of his  
 8 determination, Dr. Senn cited to studies regarding the following ethnic groups: Japanese  
 9 juveniles; a "North Texas Hispanic population;"; and "American Blacks as Compared  
 10 with Whites." Ex. L, Dental Age Assessment Report. None of the studies take into  
 11 account children from Afghanistan, in violation of ORR's Policy Guidance § 1.6.2, which  
 12 requires that the dental exam "take into account the *individual's ethnic and genetic*  
 13 *background.*" See also Ex. L, Dental Age Assessment Report.

14  
 15  
 16 Moreover, the legitimacy and accuracy of the Demirjian method of dental has  
 17 repeatedly been called into question because of its consistent inaccuracy.<sup>5</sup> The Demirjian  
 18 method is insufficient to "determine biological age with adequate accuracy to remove any  
 19 legal doubt, especially for individuals close to the age of majority, even with a 2-year  
 20

21  
 22  
 23  
 24 <sup>5</sup> See Chudong Wang, et al., *Preliminary study on genetic factors related to Demirjian's*  
 25 *tooth age estimation method based on genome-wide association analysis*, 137 Int'l J.  
 26 *Legal Medicine* 1161, 1179 (2023), available at  
 27 <https://link.springer.com/article/10.1007/s00414-023-03008-y> (last visited June 27,  
 28 2025); see also Sapna Hegde, et al., *The applicability of the original and revised*  
*Demirjian standards to age estimations of 5-15 year old Indian children*, 36 J. Forensic  
*Odontostomatol* 1, 13 (May 1, 2018), available at  
[https://pmc.ncbi.nlm.nih.gov/articles/PMC11236468/#:~:text=The%20results%20showed%20that%20the,P%20%3D%200.13\)%20in%20boys](https://pmc.ncbi.nlm.nih.gov/articles/PMC11236468/#:~:text=The%20results%20showed%20that%20the,P%20%3D%200.13)%20in%20boys) (last visited June 27, 2025).

margin.”<sup>6</sup> Health professionals have raised concerns as to the ethics of using the Demirjian method to age re-determine unaccompanied children, given the significant harm their subsequent detention causes the child.<sup>7</sup> In fact, Dr. Senn, the same doctor who provided O.E.O.’s dental assessment, has also acknowledged the limitations of the methodology. *See id.*; *see also L.B. v. Keeton*, No. CV1803435PHXJTMHB, 2018 WL 11447076 (D. Ariz. Oct. 26, 2018) (finding an unaccompanied child was likely to succeed on the merits because ORR’s exclusive reliance on a dental examination prepared by Dr. Senn violated ORR’s legal obligations). Given the above, Dr. Senn’s dental assessment is, at best, “ambiguous, debatable, or borderline” and thus should be “resolved in favor of finding [O.E.O.] is a child.” ORR Policy Guidance § 1.6.2.3.

ORR’s improper rejection of O.E.O.’s evidence establishing his minority—including declarations from his doctor and family, his school report, his individual statements, and Afghan country conditions—had the practical effect of making Dr. Senn’s dental assessment the only evidence ORR relied on in its age redetermination. The TVPRA, however, explicitly prohibits exclusive reliance on a dental assessment for age redeterminations. 8 U.S.C. § 1232(b)(4). This Court should thus find that ORR’s age redetermination is invalid.

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<sup>6</sup> Willmann C, Fernandez De Grado G, Kolb C, Raul JS, Musset AM, Gros CI, Offner D., *Accuracy of Age Estimation Using Three Dental Age Estimation Methods in a Young, Large, and Multiethnic Patient Sample* (Dec. 13, 2023), available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC10742978/#sec5-dentistry-11-00288> (last visited June 27, 2025).

<sup>7</sup> *See Corkish & Diaz, It’s Unethical to Use Dental X-Rays to Send Immigrant Children to Adult Detention Facilities*, BU School of Public Health, (Jul 3, 2019), available at <https://www.bu.edu/sph/news/articles/2019/its-unethical-to-use-dental-x-rays-to-send-immigrant-children-to-adult-detention-facilities/> (last visited June 27, 2025).

**B. Respondents Have Unlawfully Detained O.E.O. and Failed to Place Him in the Least Restrictive Setting**

Respondent ICE and ORR have violated O.E.O.’s statutory and constitutional rights by failing to promptly place O.E.O. “in the least restrictive setting that is in [his] best interest”—i.e., with his uncle M.O. 8 U.S.C. § 1232(c)(2)(A). Because of ORR’s invalid age determination, O.E.O. has been unlawfully detained in an adult facility for forty days and consequently denied his liberty and right to be reunified with his uncle. *See e.g., Ramirez v. U.S. Immigration and Customs Enforcement*, 310 F.Supp.3d 7, 17 – 19 (D.D.C. 2018) (granting preliminary injunction where Defendants did not consider least restrictive placements for unaccompanied children aging out of ORR custody, in violation of 8 U.S.C. § 1232(c)(2)(B)); *see also R.R. v. Orozco*, No. CV 20-564 KG/GBW, 2020 WL 3542333 (D.N.M. June 30, 2020) (“TVBRA and agency policies provide that [unaccompanied children] are afforded specific protections, including release to a family member or sponsor.”)

**C. ICE Has Squarely Violated Its Obligation to Notify HHS of O.E.O.’s Minority and Conduct an Age Determination**

Under 8 U.S.C. § 1232(b)(2)(B), ICE must “notify the Department of Health and Human services within 48 hours upon any claim or suspicion that an alien in the custody of such department or agency is under 18 years of age.” ICE must also conduct their own independent age determination in compliance with 8 U.S.C. § 1232(b)(4). Ms. Fox notified ICE of O.E.O.’s minority on June 2, 2025, and again on June 4, 2025. Fox Decl. ¶ 24, 27. Ms. Fox provided ICE with all of the aforementioned evidence of O.E.O.’s minority that Ms. Gast failed to consider in her determination. Ex. X, ICE Demand Letter, June 4, 2025. On June 3, 2025, ICE Officer Hoffman called Ms. Fox and told her that because she, unlike him, had not been to Afghanistan, she “did not know what [she]

1 was talking about in the letter.” Fox Decl. ¶ 26. Officer Hoffman expressed he was  
2 unfamiliar with his obligations under 8 U.S.C. § 1232(b)(2)(B), (b)(4), and the ERO  
3 Juvenile Coordinator Handbook § 3.1.2, and simply replied that “he already knew O.E.O.  
4 was an adult.” Fox Decl. at ¶ 26. But personal belief that a person is an adult and  
5 personal experience in Afghanistan are not a basis for which ICE can age re-determine  
6 and detain an unaccompanied child. *See L.B. v. Keeton*, No. CV1803435PHXJTMHB,  
7 2018 WL 11447076 (D. Ariz. Oct. 26, 2018) (“There is no apparent plausible  
8 construction of the TVPRA, or the ORR Guide, under which an ORR official's  
9 nonspecific, unsubstantiated speculation of what they perceive to be adult behavior  
10 suffices as ‘evidence’ that may be considered and relied upon in making an age  
11 determination.”).

12  
13  
14 On June 5, 2025, Officer Hoffman replied, “After further review of submitted  
15 evidence, we have determined that the subject is an adult.” Fox Decl. ¶ 28. To Ms.  
16 Fox’s knowledge, ICE did not notify HHS of O.E.O.’s minority or conduct a proper age  
17 determination following the procedures required by the TVPRA or the ERO Juvenile  
18 Coordinator Handbook § 3.1.2. After Ms. Fox’s request, O.E.O. was harassed by an ICE  
19 officer who accused O.E.O. of lying for having advocated for his rights under the  
20 TVPRA. Fox Decl. ¶ 30.

## 21 **II. O.E.O. Is Likely to Succeed on the Merits of His Claims**

22  
23 O.E.O is likely to succeed on the merits of his claims because, as argued *supra*,  
24 Respondents’ have improperly age redetermined O.E.O., in violation of their obligations  
25 under the TVPRA, the ORR Policy Guidance, and the ICE’s ERO Juvenile Coordinator  
26 Handbook. Further, Respondents ICE and ORR have an affirmative, non-discretionary  
27 obligation to place O.E.O. in the least restrictive setting, and to consider “the totality of  
28

all available evidence” and circumstances in making an age determination. 8 U.S.C. §§ 1232(b)(2)(B), (b)(4), (c)(2)(A); *see also* ORR Policy Guidance UC Guide § 1.6; ERO Juvenile Coordinator Handbook § 3.1.2. Respondents failed to follow these mandatory obligations and instead transferred O.E.O. to adult ICE detention and subjected him to expedited removal in violation of the TVPRA, the *Flores* Settlement Agreement, and the Fifth Amendment of the U.S. Constitution. *See generally* 8 U.S.C. § 1232; *see also* Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85-4544-RJK(Px), ¶ 11, 14 (C.D. Cal. Jan. 17, 1997) (hereinafter the “*Flores* Settlement Agreement”); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (holding that the Dur Process Clause applies to all persons regardless of immigration status).

**A. Respondents Violated the TVPRA and the *Flores* Settlement Agreement When They Re-Determined O.E.O.’s Age**

The TVPRA commands that ORR and ICE (1) “shall take into account multiple forms of evidence, including the non-exclusive use of radiographs, to determine the age of the unaccompanied alien;” and (2) that unaccompanied children “shall be promptly placed in the least restrictive setting.” 8 U.S.C. § 1232(b)(4), (c)(2)(A). Ms. Gast’s May 21 Memo ignored over five types of evidence, improperly rejected two pieces of evidence, failed to consider the “totality of the circumstances” in evaluating O.E.O.’s various forms of government identification, and misrepresented the conclusions of the AAU. *Compare supra* at I.A. with Ex. B, May 21 Memo. Ms. Gast’s failure to “take into account multiple forms of evidence” had the practical effect of age redetermining O.E.O. upon the exclusive use of Dr. Senn’s dental assessment, in clear violation of the TVPRA. *See* 8 U.S.C. §1232(b)(4).

As a consequence of ORR's invalid age re-determination, ICE and ORR are now also violating their obligation to "promptly place[]" O.E.O. in the "least restrictive setting." 8 U.S.C. § 1232(c)(2)(A); *see also Flores Settlement Agreement* ¶¶ 11, 14. ICE's detention of O.E.O. in an adult facility is explicitly prohibited by the TVPRA. *See* 8 U.S.C. § 1232(b) ("[T]he care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of" HHS.).

**B. Respondents' Actions Violate the Administrative Procedure Act**

O.E.O. has alleged two APA violations: (1) ICE and ORR's actions are "arbitrary, capricious" and "not in accordance with the law or their own internal agency operating procedures; and (2) ICE and ORR have "unlawfully withheld" agency action. Respondents' failure to consider "the totality of all available evidence" and circumstances going to O.E.O.'s age, failure to place O.E.O. in the "least restrictive setting," and ICE's failure to conduct its own age redetermination violate the TVPRA and ICE and ORR's own policies and procedures. 5 U.S.C. § 706(1)–(2).

**1. Respondents' Age Determination Memo Determined O.E.O.'s Legal Rights and Is Final Agency Action Reviewable Under the APA.**

Under the APA, courts may set aside and enjoin agency action if there is (1) "final agency action," (2) "for which there is no other adequate remedy in court," so long as (3) there are no statutes [that] preclude judicial review" and "agency action is [not] committed to agency discretion by law." 5 U.S.C. §§ 701(a), 704, 706(1)–(2). O.E.O. meets each of these criteria as to both of his APA claims.

Final Agency Action: "[A]gency action includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act,"

1 5 U.S.C. § 551(13). It is final where (1) the action “mark[s] the consummation of the  
2 agency decision making process,” and (2) the action is one from “which rights or  
3 obligations have been determined, or from which legal consequences will flow.” *Bennett*  
4 *v. Spear*, 520 U.S. 154, 177 – 78 (1997) (quotation marks and citations omitted).  
5 Respondents’ May 21 Memo undoubtably “mark[s] the consummation of the agency  
6 decision making process” because it is the equivalent of an agency order. *Id.* Further,  
7 legal consequences have flowed to O.E.O. As a result of Respondents’ age  
8 redetermination memo, O.E.O. is being unlawfully detained with adults at Eloy Detention  
9 Facility, has been denied his liberty and right to reunify with his uncle, and is being  
10 prevented from proceeding with his TVPRA asylum application before USCIS. *See*  
11 *Ramirez*, 310 F.Supp.3d at 22 (finding final agency action where ICE detained  
12 unaccompanied children without considering the least restrictive setting); *see also R.R.*,  
13 2020 WL 3542333 at \*9 (finding that being designated an unaccompanied child confers  
14 TVPRA rights).

17 *No Other Adequate Remedy:* O.E.O. has no other adequate remedy for his claims.  
18 Congress’ intent with the “no other adequate remedy” provision was “simply to avoid  
19 duplicating previously established special statutory procedures for review of agency  
20 actions.” *Darby v. Cisneros*, 509 U.S. 137, 146 (1993). Here, no other procedures exist  
21 to challenge Respondents’ failure to adhere to the TVPRA and their internal policy  
22 guides.  
23

24 *No Statutory Bar to Review:* No statute bars review of O.E.O.’s claims. Congress  
25 has done nothing to override “the strong presumption that Congress intends judicial  
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1 review” of the administrative actions Plaintiff challenges. *Bowen v. Mich. Acad. of Fam.*  
 2 *Physicians*, 476 U.S. 667, 670–71 (1986).

3                   **2. Respondents’ Actions Are Arbitrary, Capricious, an Abuse of**  
 4                   **Discretion, or Otherwise Not in Accordance with the Law**  
 5                   **(*Accardi*)**

6                   Courts must “hold unlawful and set aside agency action” that is “arbitrary,  
 7 capricious, an abuse of discretion, or otherwise not in accordance with the law.” 5 U.S.C.  
 8 § 706(a)(2). Agency action is arbitrary and capricious where the agency has “relied on  
 9 factors which Congress has not intended it to consider, entirely failed to consider an  
 10 important aspect of the problem, offered an explanation for its decision that runs counter  
 11 to the evidence before the agency, or [an explanation that] is so implausible that it could  
 12 not be ascribed to a difference in view or the product of agency expertise.” *Immigrant*  
 13 *Defs. L. Ctr. v. U.S. Dep’t of Homeland Sec.*, No. CV 21-0395 FMO (RAOX), 2025 WL  
 14 1191572 at \*14 (C.D. Cal. Mar. 14, 2025) (quoting *Motor Vehicle Mfrs. Ass’n of U.S.,*  
 15 *Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotations  
 16 omitted). Under the *Accardi* doctrine, agency action is also arbitrary and capricious  
 17 where the agency fails to adhere to their own internal operating procedures. *United*  
 18 *States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see also Nat’l Ass’n of*  
 19 *Home Builders v. Norton*, 340 F.3d 835, 841, 852 (9th Cir. 2003) (finding that *Accardi*  
 20 challenges may be framed as arbitrary and capricious challenges).

21                   As detailed *supra* at I.A.–C., ORR and ICE have failed to adhere to their  
 22 obligations under the TVPRA, the ORR Policy Guidance § 1.6, and the ERO Juvenile  
 23 Coordinator Handbook §3.1.2, with respect to their age determination policies and  
 24 procedures, and their obligation to place O.E.O. in the least restrictive setting. ORR’s  
 25 May 21 Memo “relied on factors which Congress had not intended it to consider” and the  
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1 explanations given for its decisions, such as its reasons for discounting O.E.O.’s doctor’s  
 2 note and school record, “run[] counter to the evidence before the agency.” *Immigrant*  
 3 *Def’s. L. Ctr.*, 2025 WL 1191572 at \*14–15. ICE also acted arbitrary and capriciously by  
 4 failing to give any reason for its determination that O.E.O. was an adult and acted  
 5 contrary to the law by detaining O.E.O. in an adult facility. *Id.*

7 Courts have consistently set aside agency actions just like those of Respondents in  
 8 this case because they are arbitrary, capricious, and otherwise not in accordance with the  
 9 TVPRA. *See Ramirez v. U.S. Immigr. & Customs Enft*, 471 F. Supp. 3d 88, 185 (D.D.C.  
 10 2020), *judgment entered by*, 568 F. Supp. 3d 10 (D.D.C. 2021) (“ICE has acted in a  
 11 manner that is “arbitrary, capricious, an abuse of discretion” and—most clearly—  
 12 “otherwise not in accordance with law” by failing to follow procedures made necessary  
 13 by Section 1232(c)(2)(B) and to take into account the factors that the statute requires.”);  
 14 Given ORR’s blatant disregard for its statutory and agency procedures requiring it to  
 15 consider the “totality of the circumstances and evidence, including the non-exclusive use  
 16 of radiographs to determine” O.E.O.’s age, O.E.O. is likely to succeed on the merits of  
 17 this claim. *See Battle v. FAA*, 393 F.3d 1330, 1336 (D.C. Cir. 2005)

### 19 **3. Respondents Unlawfully Withheld Agency Action**

20 O.E.O. is also likely to succeed on his Section 706(1) claim because ORR has  
 21 “unlawfully withheld” agency action it is required to take. Where agency action has been  
 22 “unlawfully withheld or unreasonably delayed,” Section 706(1) of the APA authorizes  
 23 the Court to compel agency action. Here, Respondents have unlawfully withheld  
 24 discrete, nondiscretionary actions that both Respondents are required to take under  
 25 U.S.C. §§ 1232(b)(4) and (c)(2). ICE and ORR “*shall* take into account multiple forms  
 26 of evidence . . . to determine the age of an unaccompanied” child, 8 U.S.C. § 1232(b)(4),  
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1 and “*shall . . . promptly place [unaccompanied children] in the least restrictive setting*  
 2 *that is in the best interest of the child.*” 8 U.S.C. § 1232(c)(2). As argued *supra* at I.A.–  
 3 C., Respondent ORR violated their obligation under 8 U.S.C. § 1232(b)(4) to consider  
 4 multiple forms of evidence in conducting age determinations, and essentially made their  
 5 determination exclusively based on Dr. Senn’s dental assessment. Further, ICE’s  
 6 decision to detain O.E.O. in an adult ICE facility based on an invalid age determination,  
 7 and its failure to conduct its own age determination violate its obligation to place O.E.O.  
 8 in the least restrictive setting. 8 U.S.C. § 1232(c)(2)(A).

10 **C. Respondents Violated the Constitution When They Age Re-Determined**  
 11 **and Detained O.E.O.**

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

17 **1. The Agencies Violated O.E.O.’s Substantive Due Process Rights**

18 The government has two legitimate interests that may be served by civil  
 19 immigration detention: preventing flight from removal proceedings and protecting the  
 20 community from danger. When the detention is untethered to any legitimate government  
 21 interest, the detention is in violation of a petitioner’s substantive due process rights.  
 22 *Zadvydas*, 533 U.S. at 701.

23 O.E.O., an unaccompanied child, has a substantive liberty interest in being free  
 24 from adult detention. O.E.O.’s detention is untethered to any legitimate government  
 25 interest because he is neither a flight risk nor danger to the community, and his detention  
 26  
 27  
 28

1 is undermined by ORR and ICE's violations of the controlling statutes, regulations, and  
2 agency policies and procedures governing the care and custody of unaccompanied  
3 children. *See supra* at I.A.–C. O.E.O. also has a pending TVPRA asylum application,  
4 which he wants to pursue, undermining any claim that O.E.O. is a flight risk.

5  
6 O.E.O. also has a substantive liberty interest in family integrity and, as a fifteen-  
7 year-old child separated from his family, O.E.O. is suffering grave harm due to his  
8 unlawful and punitive detention in an adult ICE detention facility. Respondents have  
9 infringed on his liberty interest in family integrity, as detailed *supra* at I.A.–C.

## 10 **2. The Agencies Violated O.E.O.'s Procedural Due Process Rights**

11 Respondents have also deprived O.E.O. of procedural due process by infringing on  
12 his property interest in the TVPRA and infringing on his liberty.

13  
14 O.E.O. has a protected property interest in his statutory entitlements under the  
15 TVPRA, which includes: (1) the right to prompt placement in the least restrictive setting;  
16 (2) the right to age determination procedures that take into account multiple forms of  
17 evidence; and (3) the right to have USCIS exercise initial jurisdiction over a child's  
18 TVPRA-asylum application. *See* 8 U.S.C. § 1232(b)(4), (c)(2)(A); *see also* 8 U.S.C. §  
19 1158(b)(3)(C) (amending INA § 208 to vest initial jurisdiction over "any asylum  
20 application filed by an unaccompanied . . . child" with an asylum officer). O.E.O. has  
21 been deprived of all these entitlements as a result of Respondents' unlawful actions. *See*  
22 *supra* at I.A.–C.

23  
24 O.E.O. has been unlawfully deprived of his liberty as a result of Respondents'  
25 failure to comply with their obligations under the TVPRA. *See* 8 U.S.C. § 1232(b)(4),  
26 (c)(2)(A). To find a due process violation for someone in civil confinement, a court need  
27 only balance the individual's "liberty interests in freedom from incarceration" against  
28

1 “the legitimate interests of the state.” *Or. Advocacy Ctr. V. Mink*, 322 F.3d 1101, 1121  
2 (9th Cir. 2003). The Supreme Court “repeatedly has recognized that civil commitment  
3 *for any purpose* constitutes a significant deprivation of liberty that requires due process  
4 protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979) (emphasis added).

5  
6 An analysis of the balancing test outlined in *Mathews v. Eldridge* clearly  
7 demonstrates that O.E.O. was deprived of due process. The *Mathews* test balances (1)  
8 the private interest threatened by government action; (2) the risk of erroneous deprivation  
9 of such interest and the probable value of additional procedural safeguards; and (3) the  
10 government’s interest. 424 U.S. 319, 335 (1976); *see Pereira v. Jennings*, 598 F.Supp.3d  
11 736, 745-56 (N.D. Cal. Apr. 15, 2022) (applying *Mathews* test where noncitizen was at  
12 risk of re-detention and holding that petitioner was “entitled to a post-deprivation bond  
13 hearing should ICE re-detain him”). Because O.E.O. has *never* received a hearing with  
14 the opportunity to contest his age redetermination, the *Mathews* factors clearly weigh in  
15 his favor and require that this Court promptly hold a hearing to evaluate whether  
16 Respondents can justify his continued detention.

17  
18 **First**, O.E.O.’s private interest is strong. *Zadvydas*, 533 U.S. at 690 (“Freedom  
19 from imprisonment—from government custody, detention, or other forms of physical  
20 restraint—lies at the heart of the liberty [the Due Process Clause] protects.”).  
21 Respondents’ actions have deprived O.E.O. of freedom from confinement, his right to be  
22 placed in the least restrictive setting, and his right to family integrity. Additionally,  
23 ICE’s erroneous age redetermination is depriving O.E.O. of his right to pursue his  
24 TVPRA-asylum application through USCIS and from pursuing Special Immigrant  
25 Juvenile Status (“SIJS”). *See R.R.*, 2020 WL 3542333 at \* (D.N.M. June 30, 2020).  
26  
27  
28

1        **Second**, the risk of erroneous deprivation is high. Respondents flouted their  
 2 TVPRA obligations to O.E.O. The consequence of Respondents' unlawful behavior is  
 3 that O.E.O. has now been deprived of his liberty for forty days. *See supra* at I.A.–C.

4        **Third**, Respondents have no legitimate interest in detaining an unaccompanied  
 5 child in violation of the TVPRA. It is “always in the public interest to prevent the  
 6 violation of a party’s constitutional rights.” *See Rodriguez v. Robbins*, 715 F.3d 1127,  
 7 1145 (9th Cir. 2013) (“[T]he government suffers no harm from an injunction that merely  
 8 ends unconstitutional practices and/or ensures that constitutional standards are  
 9 implemented”). Conversely, the cost of providing an individualized review is low.  
 10 Based on the *Mathews* factors, a hearing is necessary to protect O.E.O. from his  
 11 continued unlawful deprivation of liberty.

12        There should be no doubt that O.E.O.’s liberty interest and the erroneous  
 13 deprivation of his liberty far outweigh any government interest given he is an  
 14 unaccompanied child, he is not a flight risk, and he is not a danger to the community.  
 15 O.E.O. is thus likely to succeed on his constitutional claims as well.

16        **D. Respondents Have Unlawfully Subjected O.E.O. to an Expedited**  
 17 **Removal Order**

18        There is no factual basis under which O.E.O. can be subjected to expedited  
 19 removal, nor was he given an opportunity to challenge the application of expedited  
 20 removal against him. *Am-Arab Anti-Discrimination Comm .v. Ashcroft*, 272 F. Supp. 2d  
 21 650, 663 (E.D. Mich. 2003)

22        **1. There Is No Factual Basis Under Which ICE can Issue an**  
 23 **Expedited Removal Order Against O.E.O.**

24        As argued *supra*, O.E.O.’s age determination is invalid because Respondents  
 25 failed to follow their statutory obligations and internal policies and procedures.  
 26  
 27  
 28

Respondents have thus failed to establish that O.E.O. is not an unaccompanied child. The TVPRA expressly prohibits the use of expedited removal on unaccompanied children. *See* 8 U.S.C. §§ 1232(a)(2)(B), (a)(3), (a)(5)(D); *see also* Respondent’s Motion to Exceed the Type-Volume Limitation by 4, 744 Words at 18, *Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016) (No. 15-56434), 2016 WL 330944, at \*18 (“The detention requirements of the INA ... do not, however, apply to UACs, since they cannot be subjected to expedited removal or reinstatement.”). Because Respondents have failed to establish O.E.O.’s majority, there is no factual basis under which they could have issued an expedited removal order under 8 U.S.C. § 1225(b)(1). 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 such section.” 8 U.S.C. § 1252(e)(2)(B).

## 2. Subjecting O.E.O. to Expedited Removal Violates His Constitutional Due Process Rights

O.E.O. is also likely to succeed on his constitutional challenge to the use of expedited removal against him because he was denied an adequate and meaningful process to defend himself during the process. *See Zadvydas*, 553 U.S. at 693 (2001).

On May 21, 2025, O.E.O. was served with a Notice to Appear with a court date of June 2, 2025, but that court date never took place because on June 2, 2025, Ms. Fox was informed that O.E.O. was reprocessed and now subject to an expedited removal order. *See* O.E.O. Decl. ¶ 19; Fox Decl. ¶ 27. In other words, O.E.O. was denied an opportunity

1 to challenge the use of expedited removal and was not given sufficient time or  
2 opportunity to gather and present evidence in his defense, including evidence of his  
3 minority. Further, despite Ms. Fox's two requests that ICE conduct their own age  
4 determination, they declined to conduct their own review and stated that they "already  
5 knew" O.E.O. was an adult. *See* Fox Decl. ¶¶ 28; 29–30. ICE thus denied O.E.O. an  
6 adequate and meaningful opportunity to defend himself during the expedited removal  
7 process.

8  
9 The use of expedited removal against O.E.O. is statutorily and constitutionally  
10 unlawful. O.E.O. is thus likely to succeed on the merits of these two claims.

### 11 **III. O.E.O. Is Actively Suffering Irreparable Harm**

12 A TRO is appropriate where a Petitioner shows that, absent relief, they face  
13 irreparable harm—i.e., harm that is "immediate," *Caribbean Marine Servs. Co. v.*  
14 *Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988), and "for which there is no adequate legal  
15 remedy," *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014). As  
16 argued *supra*, Respondents have violated O.E.O.'s constitutional and statutory rights  
17 under the TVPRA. Since O.E.O.'s detention on May 24, 2025, O.E.O. has undoubtably  
18 faced irreparable harm.

19  
20 First, ICE has unlawfully detained O.E.O. in Eloy with adults for forty days,  
21 where he has suffered irreparable harm in the form of extreme stress and anxiety. *See*  
22 O.E.O. Decl. ¶ 20; *see also R.I.L.-R v. Johnson*, 80 F.Supp.3d 264, 191 (finding that  
23 detention is particularly harmful to minor children, and the injuries resulting from  
24 detention of children are "beyond remediation.") O.E.O. is actively being denied the  
25 medication his doctor prescribed him to manage these symptoms, and O.E.O. has also  
26 had limited contact with his family, which has added to his distress. O.E.O Decl. ¶ 20.  
27  
28

1 While no adult detention center is fit to house a child, Eloy is particularly unfit and has  
 2 been described as the “‘deadliest immigration detention center in the U.S.,’ with at least  
 3 16 reported deaths, including five suicides.”<sup>8</sup> U.S. House of Representative Yassamin  
 4 Ansari reported in May 2025 that detainees lack adequate medical care, nutrition, and  
 5 adequate drinking water. *See* Daniel Gonzalez, *Rep. Yassamin Ansari describes*  
 6 *‘sickening’ conditions at Eloy migrant detention center*, AZ Central (May 29, 2025).  
 7 Detainees also “described overcrowded, moldy cells, forced and dehumanizing marches  
 8 outside in the Arizona heat, [and] constant berating from guards.” *See* Yassamin Ansari,  
 9 *Ansari Visits Eloy Ice Detention Center To Conduct Congressional Oversight*, Yassamin  
 10 Ansari Press Releases (May 29, 2025), [https://ansari.house.gov/media/press-](https://ansari.house.gov/media/press-releases/ansari-visits-elay-ice-detention-center-to-conduct-congressional-oversight)  
 11 [releases/ansari-visits-elay-ice-detention-center-to-conduct-congressional-oversight](https://ansari.house.gov/media/press-releases/ansari-visits-elay-ice-detention-center-to-conduct-congressional-oversight) (last  
 12 visited June 27, 2025). Without relief, O.E.O.’s mental health will continue to suffer, and  
 13 his confinement in a place unfit for children will continue.  
 14

15  
 16 Second, ICE and ORR’s unlawful detention of O.E.O. has also violated his rights  
 17 to liberty and family integrity. Courts have consistently “found that deprivations of  
 18 physical liberty are the sort of actual and imminent injuries that constitute irreparable  
 19 harm.” *See* Ramirez, 310 F. Supp. 3d at 31; *see also* Rodriguez, 715 F.3d at 1145  
 20 (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (“It is well established  
 21 that deprivation of constitutional rights unquestionably constitutes irreparable injury.”))  
 22  
 23  
 24

25 <sup>8</sup> Detention Watch Network & Florence Immigrant & Refugee Rights Project, *Anthology*  
 26 *of Abuse: A Legacy of Failed Oversight and Death at the Eloy Detention Center* at 2  
 27 (2024), available at  
 28 [https://www.detentionwatchnetwork.org/sites/default/files/reports/Anthology%20of%20Abuse%20-](https://www.detentionwatchnetwork.org/sites/default/files/reports/Anthology%20of%20Abuse%20-%20A%20Legacy%20of%20Failed%20Oversight%20and%20Death%20at%20the%20Eloy%20Detention%20Center_.pdf)  
[%20A%20Legacy%20of%20Failed%20Oversight%20and%20Death%20at%20the%20Eloy%20Detention%20Center\\_.pdf](https://www.detentionwatchnetwork.org/sites/default/files/reports/Anthology%20of%20Abuse%20-%20A%20Legacy%20of%20Failed%20Oversight%20and%20Death%20at%20the%20Eloy%20Detention%20Center_.pdf).

1 (internal quotations omitted). Every day O.E.O. is unlawfully detained in Eloy  
2 compounds the irreparable harm he has already suffered. *See* O.E.O. Decl. ¶ 20–23.

3 Third, O.E.O. is also irreparably harmed because his unlawful detention is actively  
4 preventing him from continuing to pursue relief under the TVPRA. *See R.R.*, 2020 WL  
5 3542333 at \*9 (finding that an unaccompanied child suffers irreparable harm where  
6 Respondents’ age determination did not comply with agency policy, and thus prevents  
7 him from accessing asylum before USCIS and pursuing SIJS). O.E.O.’s TVPRA asylum  
8 claim remains pending before USCIS. Fox Decl. at ¶ 10. Because ICE is unlawfully  
9 detaining O.E.O., he missed his asylum biometrics appointment on May 30, 2025. *Id.*  
10 O.E.O. is also prima facie eligible for SIJS but cannot pursue it while detained. *Id.* at ¶ 9.

11 Lastly, absent a TRO, O.E.O. is at imminent risk of being removed from the  
12 United States without an opportunity to seek relief. If O.E.O. is removed on an expedited  
13 removal order, he will lose his ability to seek asylum and SIJS, and will be unable to  
14 challenge the removal process. Unlike in Section 240 removal proceedings, where  
15 respondents can continue to pursue their petitions for review after removal, no such right  
16 to continue to pursue a challenge to an expedited removal order after removal would exist  
17 for O.E.O. *Compare* 8 U.S.C. § 1229a (c)(5) (“judge shall inform the alien of the right to  
18 appeal that decision”) *with* 8 U.S.C. § 1252(a)(2)(A) (prohibiting expedited removal  
19 orders from judicial review, except for habeas corpus); *see also Nken*, 556 U.S. at 435  
20 (finding that respondents removed under 8 U.S.C. § 1229a removal proceedings “may  
21 continue to pursue their petitions for review” from outside the United States). Further, if  
22 ICE executes O.E.O.’s expedited removal order, he will be placed back into the hands of  
23 his persecutors, the Taliban, who will subject him to severe harm and likely death.  
24  
25  
26  
27  
28

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

3 **IV. The Balance of the Equities and Public Interest Factors Weigh in O.E.O.'s**  
4 **Favor**

5 When the government is a party, the balance of the equities and the public interest  
6 factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Where granting an injunction  
7 will not “substantially injure the other parties,” the balance of equities tips in plaintiff’s  
8 favor. *Id.* at 434. A petitioners “likelihood of success on the merits of a constitutional  
9 claim also tips the merged third and fourth factors decisively in his favor.” *Baird v.*  
10 *Bonta*, 81 F.4<sup>th</sup> 1036, 1042 (9th Cir. 2023).

12 Here, there will be no harm to Respondents if this Court issues a temporary  
13 restraining order because the Government “cannot suffer harm from an injunction that  
14 merely ends an unlawful practice.” *Rodriguez*, 715 F.3d at 1145; *cf. Zepeda v. I.N.S.*, 753  
15 F.2d 719, 727 (9th Cir. 1983). O.E.O. is an unaccompanied child being unlawfully held  
16 in an adult immigration detention facility and unlawfully subjected to an expedited  
17 removal order in violation of the APA, the TVPRA, the *Flores* Settlement Agreement,  
18 and the Constitution. Further, it is in the public interest to bring Respondents in  
19 compliance with the laws governing the safety and care of unaccompanied children.  
20 O.E.O. merely seeks relief that brings Respondents in compliance with their legal  
21 obligations to unaccompanied children. *See R.R.*, 2020 WL 3542333 at 10 (“[T]he Court  
22 concludes the public interest weighs in favor of Petitioner receiving an age determination  
23 that complies with Section 1232(b)(4) and agency policy guidelines.”); *see also Ramirez*,  
24 310 F.Supp.3d at 33 (“The public interest surely does not cut in favor of permitting an  
25 agency to fail to comply with a statutory mandate.”).

28 **CONCLUSION**

1 O.E.O.'s compelling and time-sensitive situation exceeds the minimum standard  
2 for requesting temporary relief. This Court should therefore:

- 3 1. Declare that ICE's and ORR's age redetermination failed to take multiple pieces  
4 of evidence into account, in violation of 8 U.S.C. § 1232(b)(4), and order that  
5 ICE and ORR immediately rescind the May 21 Memo.
- 6 2. Enjoin Respondents from applying the non-compliant age determinations as the  
7 basis for the expedited removal, custody determinations, or other immigration  
8 relief made by the agency until ORR makes an age determination in accordance  
9 with 8 U.S.C. 1232(b)(4) and ORR's Policy Guidelines.
- 10 3. Enjoin Respondents from causing Petitioner any greater harm during the  
11 pendency of this litigation, such as by transferring him anywhere outside of the  
12 jurisdiction of the District of Arizona or the Central District of California, away  
13 from his counsel
- 14 4. Order ORR to complete an age determination in compliance with 8 U.S.C.  
15 1232(b)(4) and its Policy Guidelines within forty-eight hours of the date of this  
16 Order, in compliance with 8 U.S.C. §1232(a)(4).
- 17 5. Order O.E.O.'s transfer to ORR custody within the next seventy-two hours, in  
18 compliance with 8 U.S.C 1232(b)(3), and that ORR release him to his sponsor  
19 immediately and, in any case, no later than 3 days after his transfer to ORR  
20 custody, in compliance with 8 U.S.C. § 1232(c)(2)(B), which requires prompt  
21 release to the least restrictive setting.

22  
23 DATED: June 30, 2025

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(b), I hereby CERTIFY THAT ON June 30, 2025, at approximately 3:00 PM, I emailed U.S. Attorney Timothy Courchaine with actual notice that Petitioner is filing this motion, along with electronic copies of the complaint and the brief accompanying this motion, via email before completing this electronic filing.

DATED: June 30, 2025

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