

1 TIMOTHY COURCHAINED

2 United States Attorney

3 District of Arizona

4 KATHERINE R. BRANCH

5 Assistant U.S. Attorney

6 Arizona State Bar No. 025128

7 Two Renaissance Square

8 40 North Central Avenue, Suite 1800

9 Phoenix, Arizona 85004-4449

10 Telephone: 602-514-7500

11 Facsimile: 602-514-7760

12 Email: Katherine.Branch@usdoj.gov

13 *Attorneys for Respondents*

14 **IN THE UNITED STATES DISTRICT COURT**

15 **FOR THE DISTRICT OF ARIZONA**

16 O.E.O.,

No. 2:25-cv-02283-PHX-DWL (MTM)

17 Petitioner,

18 v.

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

19 Fred Figueroa, et al.,

20 Respondents.

21 Respondents Fred Figueroa, Warden, Eloy Detention Center; John E. Cantu,
22 Phoenix Field Office; Todd M. Lyons, Acting Director of U.S. Immigration and Customs
23 Enforcement ("ICE"); Angie Salazar, Acting Director of the Office of Refugee
24 Resettlement ("ORR");¹ Andrew Gradison, Acting Assistant Secretary for the
25 Administration of Children and Families; Robert F. Kennedy, Jr., Secretary of Health and
26 Human Services ("HHS"); Lucibel Gast, Federal Field Specialist at the Office of Refugee
27 Resettlement; and Kristi Noem, Secretary of the U.S. Department of Homeland Security
28 ("DHS") ("Respondents"), by the through undersigned counsel, respond in opposition to
Petitioner's Complaint and Petition for Writ of Habeas Corpus (Doc. 1). This response is

¹ Pursuant to Fed. R. Civ. P. 25(d), Ms. Salazar, now the Acting Director of ORR, is substituted for Robin Dunn Marcos, the former Director of ORR.

1 supported by the attached exhibits and by all matters of record.

2 **I. Factual Background.**

3 Petitioner is a native and citizen of Afghanistan. Doc. 29-1 at Ex A. He entered
4 without inspection and without a valid entry document at the Calexico West Port of Entry
5 on November 12, 2024. *Id.* He presented a laminated photograph of an Afghan passport
6 and an Afghan national identity card that listed his year of birth as 2003, which made him
7 21 years of age, but claimed that he had given the authorities in Afghanistan an entirely
8 false date of birth when obtaining the documents and was only 15 years old. *Id.*; Doc. 29-
9 1 at Exs. B & C. He claimed that his true year of birth was 2009. Doc. 29-1 at Ex. A. Due
10 to the conflicting accounts of Petitioner's age, he was issued a notice to appear in general
11 removal proceedings under 8 U.S.C. § 1229(a) and was referred to ORR. *Id.* Ultimately,
12 after Petitioner's mother provided additional documentation and Petitioner underwent a
13 dental age assessment, ORR Federal Field Specialist ("FFS") Lucibel Gast determined,
14 based on the totality of the circumstances and evidence, that Petitioner is an adult, and he
15 was transferred to ICE custody. Once it was determined that Petitioner is an adult, he was
16 placed in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b). Doc. 29-1 at Ex.
17 A.

18 Petitioner filed this action on June 30, 2025. Petitioner alleges that Respondents: (1)
19 violated Section 235 of the Trafficking Victims Protection Reauthorization Act of 2008
20 ("TVPRA"), 8 U.S.C. § 1232; (2) violated the *Flores* Settlement Agreement;² (3) acted
21 arbitrarily and capriciously in violation of the Administrative Procedures Act ("APA") and
22 the *Accardi* doctrine; (4) have "unlawfully withheld" a discrete agency action in violation
23 of the APA; (5) violated the Fifth Amendment's Substantive Due Process Clause; (6)
24 violated the Fifth Amendment's Procedural Due Process Clause; (7) lack a factual basis to
25 initiate expedited removal proceedings; (8) violated the Fifth Amendment's Procedural
26 Due Process Clause by issuing an expedited removal order; and (9) violated the Prison

27
28 ² *Flores v. Reno* Stipulated Settlement Agreement dated January 17, 1997, and *Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016).

1 Rape Elimination Act (“PREA”), 28 C.F.R. § 115.14(a). At bottom, Plaintiff’s Complaint
2 and Petition challenges Respondents’ determination that he is an adult.

3 Petitioner seeks an order: declaring that ICE and ORR have acted arbitrarily and
4 capriciously, failed to follow internal policies, unlawfully withheld required agency action,
5 and violated his due process rights; declaring that ICE’s decision to detain Petitioner is
6 unlawful under the TVPRA and the *Flores* Settlement Agreement; enjoining Respondents
7 from applying ORR’s age re-determination as a basis for expedited removal, custody
8 determination, or other immigration decision; requiring his immediate release from ICE
9 custody to ORR custody; requiring ORR to complete a new age determination and release
10 him to a sponsor; enjoining Respondents from “causing [him] any greater harm[;]” and,
11 awarding attorneys’ fees and costs. Doc. 1 at Prayer for Relief.

12 **II. Framework Governing Unaccompanied Alien Children.**

13 Before the creation of DHS in 2002, the care and placement of unaccompanied alien
14 children in the United States was the responsibility of the Office of Juvenile Affairs in the
15 former Immigration and Naturalization Service. *See B.I.C. v. Asher*, No. C16-132-MJP-
16 JPD, 2016 WL 8672760 (W.D. Wash. Feb. 19, 2016) (citing *F.L. v. Thompson*, 293 F.
17 Supp. 2d 86, 96 (D.D.C. 2003)). With the enactment of the Homeland Security Act of 2002
18 (“HSA”), Congress transferred to ORR the responsibility for the care of any
19 unaccompanied alien child “who [is] in Federal custody by reason of [his or her]
20 immigration status.” *See B.I.C.*, 2016 WL 8672760, at * 2 (citing 6 U.S.C. §§ 279(a),
21 (b)(1)(A)). The HSA also transferred to ORR the responsibility for making all placement
22 decisions for unaccompanied alien children; required ORR to coordinate these placement
23 decisions with DHS; and required ORR to ensure that unaccompanied alien children are
24 not released upon their own recognizance. *Id.* (citing 6 U.S.C. §§ 279(b)(1)(C), (D), (b)(2)).
25 In December 2008, Congress enacted the TVPRA, 8 U.S.C. § 1232. The TVPRA placed
26 the care and custody of alien children under HHS’s jurisdiction. 8 U.S.C. § 1232(b)(1)
27 (requiring that “the care and custody of all unaccompanied alien children, including
28 responsibility for their detention, where appropriate, shall be the responsibility of the

1 Secretary of Health and Human Services”).

2 The TVPRA directed “the Secretary of Health and Human Services in consultation
3 with the Secretary of Homeland Security” to “develop procedures to make a prompt
4 determination of the age of an alien, which shall be used by the Secretary of Homeland
5 Security and the Secretary of Health and Human Services for children in their respective
6 custody.” 8 U.S.C. § 1232(b)(4). “[T]o carry out the TVPRA provision, HHS and DHS
7 worked jointly to develop the age determination policies and procedures[.]” *See* Section
8 1.6 of ORR Unaccompanied Alien Children Bureau Policy Guide (“ORR Guide”),
9 available at [https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-](https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide)
10 [guide](https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide) (last visited August 15, 2025). 45 C.F.R. § 410.1702-410.1703 and ORR Guide § 1.6
11 provide the age determination procedures for ORR. The ORR Guide provides that “HHS
12 may make age determinations of an unaccompanied alien child when they are in HHS
13 custody if there is a reasonable suspicion that the child is 18 years or older.” ORR Guide
14 § 1.6.1. If there is conflicting evidence regarding the age of an unaccompanied alien child,
15 the Federal Field Specialist will make the age determination based on their review of the
16 evidence collected by the care provider. *Id.* at § 1.6.1. ORR must consider multiple forms
17 of evidence in making age determinations that are made based upon a totality of evidence.
18 *Id.* at § 1.6.2. Among other things, ORR may consider evidence such as authentic
19 government-issued documents, school records, medical records, sworn affidavits from
20 parents or other relatives. *Id.*

21 When information regarding age is “inconclusive,” ORR may use medical age
22 assessment procedures, such as dental maturity assessments using radiographs. *Id.*; *see also*
23 45 C.F.R. § 410.1703(8). Medical age assessments are not used as a sole determining factor
24 but only in concert with other factors. ORR Guide § 1.6.2. The ORR Guide recognizes that
25 “no current medical assessment method can determine an exact age [so] best practice relies
26 on the estimated probability that an individual is 18 or older.” *Id.* “The examining doctor
27 must submit a written report indicating the probability percentage that the individual is a
28 minor or an adult.” *Id.* “If an individual’s estimated probability of being 18 or older is 75

1 percent or greater according to a medical age assessment, and this evidence has been
 2 considered in conjunction with the totality of the evidence, ORR *must* determine that the
 3 individual is 18 years or older and may refer the individual to [DHS].” *Id.* (emphasis
 4 added); *see also* 45 C.F.R. § 410.1703(8). The TVPRA further provides that age
 5 determinations shall take into account multiple forms of evidence, including the non-
 6 exclusive use of radiographs, to determine the age of the unaccompanied alien. 8 U.S.C.
 7 § 1232(b)(4).

8 **III. Argument.**

9 **A. Petitioner fails to show that Respondents violated the TVPRA or their** 10 **own regulations.**

11 Petitioner alleges in Count 1 that Respondents violated section 235 of the TVPRA
 12 (8 U.S.C. § 1232) by not considering “the totality of the circumstances and the evidence
 13 establishing that O.E.O is fifteen years old,” and by not placing him in the least restrictive
 14 setting. Doc. 1 at ¶ 82. There is no basis to allege that either ORR’s or ICE’s age
 15 determination findings violated their joint age determination policy. ICE’s determination
 16 followed the requirements of the TVPRA and relied on multiple forms of evidence to
 17 reasonably conclude that Petitioner is not a minor. With respect to ORR, the joint policy
 18 makes clear that where a medical age assessment determines that an individual’s estimated
 19 probability of being 18 or older is 75 percent or greater, “*and* this evidence has been
 20 considered in conjunction with the totality of the evidence, ORR *must* determine that the
 21 individual is 18 years or older and *may* refer the individual to [DHS].” ORR Guide § 1.6.2
 22 (emphasis added). Here, Petitioner’s medical assessments concluded that the “empirical
 23 statistical probability” of Petitioner “having attained 18 years of age is 77.55%.” Doc. 29-
 24 1 at Ex. E. Both DHS and ORR considered this evidence along with the totality of the other
 25 evidence provided and determined that Petitioner’s proper placement is in DHS custody.

26 **1. FFS Gast considered the totality of the evidence when** 27 **determining that Petitioner is not a minor.**

28 Petitioner alleges that FFS Gast ignored the evidence of his minority provided by
 his family members and the country conditions in Afghanistan, but FFS Gast prepared two

1 reports addressing what she reviewed and relied on to determine that Petitioner was not a
2 minor, *see* Doc. 10 at Exs. A & B, and submits herewith a declaration further explaining
3 her decision, *see* Ex. 1, Decl. of Lucibel Gast. The record shows that FFS Gast considered
4 the totality of the circumstances and evidence when making her determination regarding
5 Petitioner's age.

6 After Petitioner entered ORR custody, the case manager at the shelter at which
7 Petitioner was placed by ORR contacted Petitioner's mother, who provided a different
8 month and day of birth than Petitioner had given, but the same year (2009). Ex. 1, Decl. of
9 Lucibel Gast ("Gast Decl.") at ¶ 6; Doc. 29-1 at Ex. D. On November 18, 2024, ORR
10 submitted to the State Department scans of the passport and national identity card Petitioner
11 presented at the Port of Entry. Ex. 1, Gast Decl. at ¶ 7; Doc. 29-1 at Ex. D. The response
12 from the cultural advisers at the State Department's Afghanistan Affairs Unit ("AAU")
13 confirmed that the documents appeared to be genuine and valid. *Id.* They recommended
14 that the documents be read by an MRZ reader, but because the documents presented by
15 Petitioner were laminated photographs of the original documents, there is nothing for an
16 MRZ reader to read. Ex. 1, Gast Decl. at ¶ 8. Based on the AAU's assessment, FFS Gast,
17 determined that the documents were not fraudulent and considered them as part of the
18 totality of the evidence when determining Petitioner's age. *Id.* at ¶ 9.

19 Petitioner continued to insist that his date of birth is different than the date that
20 appears on his passport and national identity card. FFS Gast instructed O.E.O.'s case
21 managers to contact O.E.O.'s family for additional documentation. *Id.* at ¶ 10. Petitioner's
22 mother said that she could not provide additional documentation due to the political climate
23 in Afghanistan. *Id.* However, she later texted a photograph of a paper Tazkira (another
24 form of identification used in Afghanistan) which she alleged belonged to Petitioner, and
25 which bore a 2009 date of birth. *Id.* at ¶ 11. The photograph of the paper Tazkira provided
26 by Petitioner's mother was provided to the AAU, which determined that the paper Tazkira
27 appeared to have been altered. *Id.* at ¶ 13; Doc. 29-1 at Ex. D. FFS Gast prepared an age
28 determination memorandum dated May 1, 2024. Doc. 10 at Ex. A. In making her decision,

1 FFS Gast considered the conflict between the dates of birth provided by Petitioner and by
2 his mother, which did not agree as to month or day and the AAU's determination that the
3 passport and national identity card were genuine while the paper Tazkira appeared to have
4 been altered. Ex. 1, Gast Decl. at ¶¶ 6, 7, 9, 13.

5 On May 2, 2025, the same day that Petitioner was transferred to ICE custody,
6 Petitioner's mother texted to Petitioner's case manager photographs of a doctor's
7 handwritten note attesting to Petitioner's 2009 date of birth and a school record. Ex. 1, Gast
8 Decl. at ¶ 15; *see also* Doc. 10 at Ex. Z. FFS Gast asked ICE to transfer Petitioner back
9 into ORR custody while the new information was considered. Ex. 1, Gast Decl. at ¶ 15.
10 The documents were provided to the AAU, which determined that "[n]either the hospital
11 and nor the school records are genuine documents." *Id.* at ¶ 18. Specifically, the Afghan
12 cultural advisors noted that the school record "is unofficial and seems to have been
13 prepared by someone without authority", was self-made, and "not genuine." *Id.* at ¶ 18
14 (citing Att. E to Gast Decl.). The Afghan cultural advisors also relayed that the document
15 looked nothing like the education documents they had previously seen and that the record
16 stated that the Petitioner began school at age 9, which would be "very unusual for
17 Afghanistan." *Id.* The cultural advisors also stated that Petitioner's story about obtaining
18 genuine documents using an incorrect date of birth was "unlikely," that obtaining a paper
19 Tazkira is a much less rigorous process, and that paper Tazkiras are easily falsified. *Id.* The
20 State Department's assessment was that "the school and medical records have no
21 persuasive value and ultimately raise more questions about the case than we originally
22 had." Ex. 1, Gast Decl. at Att. E. FFS Gast also requested a dental age assessment, which
23 indicated that the statistical probability of Petitioner having attained the age of 18 was
24 77.55%. Ex. 1, Gast Decl. at ¶ 19 and at Att. F. In addition to the paper Tazkira, medical
25 and school records, Petitioner's mother provided written statements from Petitioner's
26 family members attesting to his alleged minority. *Id.* at ¶ 17.

27 On May 21, 2025, FFS Gast prepared a Memo of Age Re-Determination in which
28 she reviewed the evidence submitted by Petitioner and his mother, and discussed the

1 findings of the AAU and the dental age assessment, before ultimately concluding:

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

10 Doc. 10 at Ex. B. FFS Gast found the letters from Petitioners’ family members to be
11 unpersuasive in light of the other documentary evidence. Ex. 1, Gast Decl. at ¶ 21.

12 The record here shows that FFS Gast considered all of the evidence presented and
13 did not rely exclusively on any single piece of evidence, but rather that she considered the
14 totality of the evidence as required by the TVPRA and the regulations. Thus, Petitioner’s
15 claim that ORR violated the TVPRA and its own regulations should be denied.

16 **2. ICE did not violate the TVPRA.**

17 The Juvenile and Family Residential Management Unit (“JFRMU”) within ICE’s
18 Enforcement and Removal Operations (“ERO”) has developed the Field Office Juvenile
19 Coordinator Handbook (the “FOJC Handbook”) as an operational guide for Field Office
20 Juvenile Coordinators. A copy of the FOJC Handbook is available at
21 https://www.ice.gov/doclib/foia/policy/handbookFOJC_Nov2021.pdf (last accessed
22 August 15, 2025). The FOJC Handbook provides only internal ICE policy guidance and
23 recognizes that “[e]ach field office may have geographic or operational variances that
24 require alterations to certain best practices[.]” FOJC Handbook at 2. The FOJC Handbook
25 provides that “[i]n cases where the age of an alien is in question, the TVPRA requires that
26 age-determination procedures include reviewing multiple forms of evidence. Under these
27 procedures, each case must be evaluated carefully based on the totality of all available
28 evidence, including the statement of the individual in question.” FOJC Handbook § 3.1.2.
The FOJC Handbook describes the acceptable documentation for age determination, which
tracks the TVPRA and the ORR Guide. *Id.* It further describes the medical age assessment

1 process and directs that “[i]f the probability of an individual being 18 years or older is 75
2 percent or greater, and the totality of the evidence suggests the person is an adult, process
3 the individual as an adult.” *Id.* The FOJC Handbook directs that the “final age
4 determination will be made by the [Field Office Director (“FOD”)], or designee, based on
5 the totality of the evidence provided. The FOD will promptly evaluate new information
6 regarding the age of the individual in ERO custody if presented by the individual, his/her
7 family, and or legal representative.” *Id.*

8 The FOD has delegated authority for making age determinations to the Deputy Field
9 Office Directors (“DFOD”). Ex. 2, Delegation Memo. In this case, DFOD Jason Ciliberti,
10 reviewed all of the evidence submitted in the matter of Petitioner’s age determination in
11 accordance with the guidance provided in the FOJC Handbook and determined that the
12 totality of the evidence submitted does not overcome ICE’s determination that Petitioner
13 is an adult. Ex. 3, Final Age Determination Memorandum dated August 7, 2025. DFOD
14 Ciliberti considered all of the evidence presented and did not rely exclusively on any single
15 piece of evidence but rather considered the totality of the evidence as required by the
16 TVPRA and as set forth in the FOJC Handbook. Thus, Petitioner’s claim that ICE violated
17 the TVPRA and its own policies and procedures should be denied.

18 **B. Petitioner fails to show that Respondents have violated the APA.**

19 In Counts 3 and 4, Petitioner asserts that Respondents have violated the APA by
20 “deviat[ing] from their own regulations by failing to consider the totality of the evidence
21 establishing that O.E.O. is a minor and consequently placing O.E.O. in adult detention,”
22 Doc. 1 at ¶ 91, and “relied on questionable dental exams and fraudulent identification
23 documents and failed to consider O.E.O.’s statements, statements and declarations from
24 his family members, school records, medical records, his sister’s national identification
25 document, and O.E.O.’s legitimate national identification document.” *Id.* He further alleges
26 that ORR and ICE have “‘unlawfully with[held]’ discrete, nondiscretionary actions” by
27 failing to “consider multiple forms of evidence establishing O.E.O is an unaccompanied
28 minor[.]” *id.* at ¶ 97.

1 The Court may only reverse an agency decision if the decision is “arbitrary,
2 capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C.
3 § 706(2)(A); *Am. Wildlands v. Kempthorne*, 530 F.3d 991, 997 (D.C. Cir. 2008). An agency
4 acts arbitrarily or capriciously if it “has relied on factors which Congress has not intended
5 it to consider, entirely failed to consider an important aspect of the problem, offered an
6 explanation for its decision that runs counter to the evidence before the agency, or is so
7 implausible that it could not be ascribed to a difference in view or the product of agency
8 expertise.” *Motor Vehicle Mfrs. Ass’n of United States, Inc. v. State Farm Mut. Auto. Ins.*
9 *Co.*, 463 U.S. 29, 43 (1983). The Court’s review “under the ‘arbitrary and capricious’
10 standard is narrow and a court is not to substitute its judgment for that of the agency.” *Id.*

11 The TVPRA directed HHS and DHS to develop procedures to make a prompt
12 determination of the age of an alien, which must take into account multiple forms of
13 evidence. 8 U.S.C. § 1232(b)(4). Those procedures were developed in regulations and in
14 the ORR Guide, which acknowledges the “challenges in determining the age of individuals
15 in custody.” ORR Guide at § 1.6. As addressed above, the regulation and ORR Guide direct
16 that “[p]rocedures for determining the age of an individuals must take into account the
17 totality of the circumstances and evidence, including the non-exclusive use of radiographs,
18 to determine the age of the individual.” 45 C.F.R. § 410.1702; ORR Guide § 1.6.2. ORR
19 considers multiple forms of evidence including documentation, statements by individuals,
20 and medical age assessments. 45 C.F.R. § 410.1703; ORR Guide at § 1.6.2.

21 In this case, the evidence indicates that Petitioner has an authentic Afghan passport
22 and national identity card that establish his year of birth as 2003. The contrary evidence
23 are statements by Petitioner and his family members that his year of birth is 2009, a doctor’s
24 note attesting to Petitioner’s 2009 date of birth, school records that are unlike any seen by
25 the AAU’s cultural advisors who determined that they are not genuine, appear to be self-
26 made, and are inconsistent with the age a child starts school in Afghanistan, and a paper
27 Tazkira that appears to be digitally manipulated. Because of the inconsistency in the
28 records, a dental maturity assessment was performed that determined with a 77.55%

1 probability that Petitioner was at least 18 years old. The ORR Guide provides that “[i]f an
2 individual’s estimated probability of being 18 or older is 75 percent or greater according
3 to a medical age assessment, and this evidence has been considered in conjunction with the
4 totality of the evidence, ORR must determine that the individual is 18 years or older and
5 may refer the individual to [DHS].” ORR Guide § 1.6.2; 45 C.F.R. § 410.1703(8).

6 Plaintiff is asking this Court to reweigh the evidence contained within the
7 administrative record, ignore the evidence that does not favor his claim to minority, and
8 reject ORR’s and ICE’s evaluation of the evidence. It is well-established that a district
9 court cannot reweigh the evidence before the agency. *Lockheed Shipbuilding v. Director,*
10 *OWCP*, 951 F.2d 1143, 1146 (9th Cir. 1991). Indeed, the agency’s factual findings are
11 reviewed on the substantial evidence standard, which means that the court will not disturb
12 the findings unless the evidence presented would compel a reasonable fact finder to reach
13 a contrary result. *Herrera v. U.S. Citizenship & Immigr. Servs.*, 571 F.3d 881, 885 (9th Cir.
14 2009). Additionally, where the agency has relied on “relevant evidence [such that] a
15 reasonable mind might accept as adequate to support a conclusion,” its decision is
16 supported by “substantial evidence.” *Bear Lake Watch, Inc. v. FERC*, 324 F.3d 1071, 1076
17 (9th Cir. 2003).

18 ORR’s determination that Petitioner is not a minor was grounded in the evidence
19 and explained by FFS Gast, who followed the TVPRA, the ORR Guide and ORR’s
20 regulations when she considered the totality of the evidence presented in making her age
21 determination. *See* Section III.A.1, *supra*. Similarly, DFOD Ciliberti reviewed the evidence
22 in the file, including the documents and arguments presented by Petitioner’s counsel, and
23 determined that Petitioner is not a minor. Ex. 3; *see also* Doc. 41 (lodged) at ICE-AR-0076-
24 0134. The question before the Court is not whether FFS Gast’s or DFOD Ciliberti’s
25 determination “was the only reasonable one on this record or even the most reasonable one,
26 but whether it was a sensible one.” *Ctr. for Biological Diversity v. United States Fish and*
27 *Wildlife Serv.*, No. 23-5285, 2025 WL 2181489, at * 13 (D.C. Cir. Aug. 1, 2025); *see also*
28 *Deaf Smith Cnty. Grain Processors, Inc. v. Glickman*, 162 F.3d 1206, 1215 (D.C. Cir.

1 1998) (“[U]nder the arbitrary and capricious standard, ‘[t]he action . . . need be only a
2 reasonable, not the best or most reasonable, decision[.]’”) (citation omitted).

3 Respondents’ age determinations were not arbitrary or capricious, nor have
4 Respondents withheld any discrete action they were required to take. Petitioner’s failure to
5 establish a violation of the APA is fatal to his request to compel Respondents to re-
6 determine his age for a third time, release him from adult detention, and transfer him to
7 ORR custody for immediate release to a sponsor. Petitioner has not shown that
8 Respondents have failed or refused to examine the evidence regarding his age or failed to
9 make a determination of his age based on that evidence. That Respondents reached a
10 conclusion Petitioner disagrees with does not entitle him to relief under the APA. *See*
11 *C.T.M. v. Moore*, No. 3:20-cv-540-B (BT), 2020 WL 5919737, at *9 (W.D. Tex. July 1,
12 2020), *report and recommendation adopted*, 2020 WL 4333365 (N.D. Tex. July 28, 2020)
13 (rejecting purported minor’s APA challenge to ORR and ICE’s age determinations).

14 **C. Petitioner’s detention does not violate due process.**

15 In Count Five, Petitioner alleges that his confinement in adult detention violates his
16 substantive due process rights since he is an unaccompanied alien minor. To show that
17 Respondents violated his substantive due process rights, Petitioner must establish that
18 Respondents’ conduct “shocks the conscience.” *Cnty. of Sacramento v. Lewis*, 523 U.S.
19 833, 846 (1998). Where, as here, circumstances afford reasonable time for deliberation
20 before acting, conduct is considered to be conscience-shocking if it was taken with
21 deliberate indifference toward a plaintiff’s constitutional rights. *Id.* at 846. The Complaint
22 and Petition falls far short of this standard, and the evidence shows that ORR considered,
23 and then re-considered Petitioner’s age, in light of the totality of the circumstances and
24 evidence. Similarly, DFOC Ciliberti reviewed the evidence provided and the arguments of
25 Petitioner’s counsel and determined that Petitioner’s family’s statements did not overcome
26 the evidence that Petitioner is an adult. Nothing about FFS Gast’s or DFOD Ciliberti’s
27 actions demonstrate a deliberate indifference toward Petitioner’s constitutional rights.

28 Once it was determined that Petitioner is not a minor, his removal proceedings

1 before the immigration court were terminated and he was processed under the expedited
2 removal procedures applicable to inadmissible aliens encountered at the border without
3 valid entry documents. Doc. 29-1 at Ex. A.; *see also* 8 U.S.C. § 1225(b)(1). As an adult
4 detainee determined to be inadmissible for lack of a valid entry document and in expedited
5 removal proceedings under 8 U.S.C. § 1225(b), Petitioner is subject to mandatory detention
6 under 8 U.S.C. § 1225(b)(1)(B)(ii), which provides that an alien indicating either an
7 intention to apply for asylum or a credible fear of persecution, 8 U.S.C. § 1225(b)(1)(A)(ii),
8 “shall be detained” while that alien’s asylum application is pending, 8 U.S.C. §
9 1225(b)(1)(B)(ii).

10 Petitioner has claimed a fear of return to Afghanistan and is awaiting an asylum
11 interview. He is therefore subject to mandatory detention during his expedited removal
12 proceedings while his credible fear claim is adjudicated. 8 U.S.C. § 1225(b)(1)(B)(ii). As
13 the Supreme Court has observed, “detention during deportation proceedings [is] a
14 constitutionally valid aspect of the deportation process”. *Demore v. Kim*, 538 U.S. 510,
15 523 (2003). Petitioner’s substantive due process rights are not violated by his detention.

16 **D. Petitioner’s procedural due process rights have not been violated.**

17 In Count Six, Petitioner asserts that as an unaccompanied alien child, his procedural
18 due process rights have been violated because he has not been afforded the statutory
19 entitlements due to unaccompanied alien children. However, as addressed above, because
20 ORR and ICE have determined that Petitioner is an adult, not an unaccompanied alien
21 child, those statutory entitlements are not available to him, and the fact that they have not
22 been provided to him does not violate his procedural due process rights. *See B.I.C.*, 2016
23 WL 8672760, at *2 (“The protections TVPRA affords [unaccompanied alien children]
24 apply after the HHS, in consultation with the DHS, determines that the applicant is indeed
25 a child.” (citing 8 U.S.C. § 1232(b))).

26 Insofar as Petitioner’s complaint can be read to allege that the age determination
27 process itself violated his procedural due process rights, Petitioner’s claim fails. The
28 procedural component of due process “imposes constraints on governmental decisions

1 which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due
2 Process Clause.” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). When the government
3 deprives a person of a protected liberty or property interest, it is obliged to provide “notice
4 and opportunity for hearing appropriate to the nature of the case.” *Mullane v. Cent.*
5 *Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950).

6 Typically, a procedural due process issue is evaluated under the balancing standard
7 the Supreme Court articulated in *Mathews*. See *Hamdi v. Rumsfeld*, 542 U.S. 507, 529-30
8 (2004) (plurality opinion) (explaining that *Mathews* provides “ordinary mechanism” to
9 determine what process is due). The *Mathews* framework consists of three factors:

10 (1) the nature of the private interest that will be affected, (2) the comparative
11 risk of an erroneous deprivation of that interest with and without additional
12 or substitute procedural safeguards, and (3) the nature and magnitude of any
13 countervailing interest in not providing additional or substitute procedural
14 requirements.

15 *Turner v. Rogers*, 564 U.S. 431, 444-45 (2011) (alterations and internal quotation marks
16 omitted). As the Supreme Court has explained, “due process is flexible and calls for such
17 procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S.
18 471, 481 (1972). For example, the “hearing” required by the Due Process Clause need not
19 be “an adversarial hearing, a full evidentiary hearing, or a formal hearing.” *Buckingham v.*
20 *Sec’y of U.S. Dep’t of Agr.*, 603 F.3d 1073, 1082 (9th Cir. 2010) (citations and internal
21 quotation marks omitted). The basic requirements of notice and an opportunity to be heard
22 demand only that the complaining party receive notice of the reasons for the deprivation,
23 an explanation of the evidence against him, and “an opportunity to present his side of the
24 story.” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985). Beyond those
25 requirements, the need for procedural safeguards is ordinarily measured by the three-factor
26 framework established in *Mathews*.

27 Here, Petitioner has not shown that the procedures used by Respondents were
28 insufficient. Petitioner alleges that Respondents failed to consider the totality of the
evidence, but Respondents considered the evidence submitted by Petitioner and his mother,

1 including the medical and school records and the statements of family members, the
2 opinions of the AAU as to the legitimacy of certain documents, the official government
3 documents Petitioner presented, and the dental age assessment. FFS Gast found the
4 statements by Petitioner and his family members to be unpersuasive in light of the other
5 evidence establishing that Petitioner is an adult. When Petitioner presented additional
6 evidence, it was considered by Respondents, who explained that their conclusion remained
7 the same. Petitioner's claim that Respondents failed to consider the totality of the evidence
8 and thereby violated his procedural due process rights fails.

9 **E. Respondents did not violate the *Flores* settlement agreement.**

10 In Count 2, Petitioner alleges that Respondents violated the *Flores* settlement
11 agreement by failing to place him in the least restrictive setting—that is, releasing him to
12 his uncle. Doc. 1 at ¶ 86. Count 2 presumes that Petitioner is a minor, but as established
13 above, ORR and ICE have properly determined that Petitioner is an adult. As such, he is
14 not a member of the *Flores* class, and he is not entitled to be detained in the least restrictive
15 setting.

16 **F. Petitioner is properly subject to expedited removal.**

17 In Count Seven, Petitioner asserts that he was improperly issued an expedited
18 removal order because unaccompanied alien children cannot be ordered removed on an
19 expedited basis, and in Count Eight, alleges that his due process rights as an
20 unaccompanied alien child are violated by issuance of the expedited removal order.
21 Petitioner does not otherwise contest the validity of the expedited removal order issued to
22 him. As addressed above, because ORR and ICE have determined that Petitioner is an
23 adult, not an unaccompanied alien child, he is properly subject to expedited removal
24 pursuant to 8 U.S.C. §1225(b)(1)(A)(iii)(II).

25 **G. Respondents have not violated the Prison Rape Elimination Act.**

26 In Count Nine, Petitioner alleges that Respondents have violated PREA by housing
27 him in adult detention as an unaccompanied alien child. However, the PREA provision
28 cited by Petitioner would only apply if he was, in fact, a minor. 28 C.F.R. § 115.14(a). In

1 any event, Petitioner's PREA claim must fail because PREA does not create a private right
2 of action. "A private right of action to enforce federal law must be created by Congress."
3 *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). A person's "ability to bring a private
4 right of action may be authorized by the explicit statutory text or, in some instances, may
5 be implied from the statutory text" where "there is clear evidence" of Congressional intent.
6 *Nisqually Indian Tribe v. Gregoire*, 623 F.3d 923, 929 (9th Cir. 2010). The court's role is
7 to "interpret the statute Congress has passed to determine whether it displays an intent to
8 create not just a private right but also a private remedy." *Id.* Without specific Congressional
9 intent, no private right of action exists. *Parker v. Garcia*, No. 1:23-cv-01583-KES-EPG-
10 PC, 2024 WL 1641899, at *3 (E.D. Cal. Apr. 16, 2024).

11 PREA does not "explicitly or implicitly suggest[] that Congress intended to create
12 a private right of action for inmates to sue prison officials for noncompliance with the Act."
13 *Hatcher v. Harrington*, No. 14-00554 JMS/KSC, 2015 WL 474313, at *5 (D. Haw. Feb.
14 5, 2015). "Nor does the PREA's language, structure, context, or legislative history suggest
15 that Congress intended to create a private remedy for noncompliance with the PREA." *Id.*,
16 2015 WL 474313, at *5; *see* 34 U.S.C. § 30307(e) (explicitly directing the Attorney
17 General to enforce compliance with the PREA); *Alexander*, 532 U.S. at 286 (explaining
18 that absent Congressional intent "to create not just a private right but also a private remedy
19 . . . no private right of action exists."); *see also Denton v. Pastor*, No. C17-5075 BHS-TLF,
20 2017 WL 5068329, at *1 (W.D. Wash. Nov. 2, 2017) ("any claim predicated on purported
21 statutory violations of the PREA must be dismissed"); *Reed v. Racklin*, No. 2:17-CV-00799
22 AC P, 2017 WL 2535388, at *2 (E.D. Cal. June 12, 2017) ("The PREA does not give rise
23 to a private cause of action").

24 Petitioner has been determined to be an adult, not a minor, and as such, is subject to
25 detention in an adult facility. Respondents did not violate PREA by moving him to an adult
26 detention facility after determining that he is not a minor, and PREA does not provide a
27 private cause of action.
28

1 **H. The Court cannot grant the remedies Petitioner seeks.**

2 Petitioner seeks, in part, an order requiring ORR to rescind its age re-determination,
3 requiring his immediate release from ICE custody to ORR custody, and requiring ORR to
4 complete a new age determination and release him to a sponsor. Doc. 1 at ¶ 2 and Prayer
5 for Relief. Even if the Court were to find that ORR had acted arbitrarily and capriciously
6 by not giving more weight to the statements of Petitioner and his family members regarding
7 his age, the Court cannot order ORR to find that Petitioner is a minor. At most, the Court
8 can remand the age determination to ORR for a new assessment. Similarly, the Court
9 cannot order ORR to release Petitioner to his uncle within 72 hours because the TVPRA
10 requires ORR to make a determination that the proposed custodian is capable of providing
11 for the unaccompanied alien child's physical and mental well-being before placing him
12 with the custodian. *See* 8 U.S.C. § 1232(c)(3)(A). That process necessarily takes longer
13 than 72 hours, and it may be the case that Petitioner's uncle is not a suitable custodian. The
14 Court cannot order ORR to determine that Petitioner is a minor and cannot order ORR to
15 release him to his uncle without complying with the requirements of TVPRA.

16 **IV. Conclusion.**

17 Despite the variety of legal theories represented by Petitioner's nine causes of
18 action, each is merely a different route to try to reach the same destination—a court order
19 requiring ORR and ICE to determine that he is an unaccompanied alien minor and to treat
20 him as such. Petitioner's claims pre-suppose that he is a minor, and challenge ORR's and
21 ICE's determination that he is an adult. However, the evidence in the record establishes
22 that ORR and ICE did not act arbitrarily or capriciously when determining Petitioner's age.
23 Rather, they considered the evidence presented by Petitioner, the findings and opinions of
24 the federal departments and employees tasked with determining whether documents are
25 authentic, the dental age assessment, and the totality of the circumstances and evidence
26 presented to determine that Petitioner is an adult. This Court may not reweigh the evidence
27 and is limited to determining whether “substantial evidence” supports ORR and ICE's
28 findings—which it does. Even if the Court were to determine that ORR's and/or ICE's age

1 determination is not supported by substantial evidence, the remedy would be to remand the
2 issue to the agency to make a new determination—not to determine that Petitioner is a
3 minor and order him released from custody.

4 Respectfully submitted this 15th day of August, 2025.

5 TIMOTHY COURCHaine
6 United States Attorney
7 District of Arizona

8 s/ Katherine R. Branch
9 KATHERINE R. BRANCH
10 Assistant United States Attorney
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28