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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

12 O.E.O.,
13 Petitioner,
14 v.
15 Fred Figueroa, et al.,
16 Respondents.

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

Hon. Judge Dominic W. Lanza

**PETITIONER'S TRAVERSE IN
SUPPORT OF COMPLAINT AND
PETITION FOR WRIT OF HABEAS
CORPUS**

**EVIDENTIARY HEARING
RESPECTFULLY REQUESTED**

**PETITIONER'S TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS
CORPUS**

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INTRODUCTION

Fifteen-year-old Petitioner, O.E.O., is unlawfully detained in adult ICE custody at the Eloy Detention Center in Eloy, Arizona. ICE and ORR both failed to follow their own age-determination procedures, in violation of the TVPRA, the Flores Settlement Agreement, the Administrative Procedure Act, and the Fifth Amendment to the U.S. Constitution. This Court should grant the appropriately requested declaratory and injunctive relief, enjoining Respondents from relying on the improper age determinations, and ordering O.E.O.'s immediate release from Eloy Detention Center.

FACTS

When O.E.O. presented himself at the border, he provided a laminated copy of a passport showing his date of birth as March 21, 2003, but immediately told the CBP officer that he was born on [REDACTED] 2009.¹ Dkt. 12, O.E.O. Decl. at ¶8. O.E.O. explained to CBP that “they don’t let minors leave Afghanistan” and “it is not a counterfeit passport, but [that] he obtained [it] by fraud” with the DOB of March 21, 2003. ICE-AR-0004, -0033.² O.E.O. presented a copy of that passport because the original was lost in the Panama jungle. ICE-AR-0008.

In early December, O.E.O.'s family sent O.E.O.'s case manager, Erik Ortiz Cruz (“Mr. Ortiz Cruz”) a photograph of a black and white copy of O.E.O.'s original Tazkira, with a handwritten DOB. *See* S.O. Decl. at ¶11; *see also* S.O. Decl. at Tab 1. O.E.O.'s family then obtained a copy of O.E.O.'s Tazkira National Statistics and Information Authority (“NSIA”), which is handwritten with blue ink and has a color photograph of

¹ ICE alleges that O.E.O. stated his DOB was March 23, 2009, but that is not possible. ICE-AR-0044. At that time, O.E.O. did not yet know how to say his birthday under the Gregorian calendar, so he stated his DOB was [REDACTED] which is his DOB under the Solar Hijari calendar. O.E.O. Supplemental Declaration (“O.E.O. Supp. Decl.”) at ¶4. The Solar Hijari calendar, is the calendar used by Afghanistan, and “is widely used for both civil and religious purposes.” Nowruz, Emory Libraries Research Guides, available at <https://guides.libraries.emory.edu/c.php?g=1457269&p=10835095> (last visited August 25, 2025).

² ICE and ORR's administrative records cites the bates numbering on the bottom right corner of each record.

1 O.E.O. S.O. Decl. at ¶12. On December 6, 2025, O.E.O.'s family sent a scanned version
 2 of this original Tazkira to Mr. Ortiz Cruz via WhatsApp. *See* S.O. Decl. at ¶13; *see also*
 3 S.O. Decl. at Tab 3; ORR-AR-0032–33 (black and white copy of the color version sent to
 4 ORR by O.E.O.'s family). Mr. Ortiz Cruz then requested that his family translate the
 5 document from Dari into English for ORR. *See* S.O. Decl. at ¶14. O.E.O.'s family sent
 6 the English translation to Mr. Ortiz Cruz shortly after. S.O. Decl. at ¶14; *see also* S.O.
 7 Decl. at Tab 4. According to O.E.O.'s family, these are the only versions of the Tazkira
 8 ORR had in its possession when ORR sent a copy to the AAU on March 21, 2025. *See*
 9 S.O. Decl. at ¶¶10–15; *see also* Dkt. 43-1 Ex. 1 at ¶¶12–13.

10 On May 1, 2025, Lucibel Gast (“Ms. Gast”), issued a Memo of Age Re-
 11 Determination. *See* Dkt. 10, Ex. A. Ms. Gast stated that O.E.O. had a passport and
 12 National ID with a DOB of March 23, 2009. *Id.* There is no evidence of the existence of
 13 a passport and National ID with a DOB of March 23, 2009 in the administrative record.
 14 *See generally* ORR-AR. This memo also states that O.E.O. “initially reported his date of
 15 birth as  2009.” *Id.*; *see also* O.E.O. Supp. Decl. at ¶5–6.

16 In May 2025, Mr. Ortiz Cruz requested O.E.O.'s family translate the English
 17 translation back into the Dari language. *See* S.O. Decl. at ¶15. On May 8, 2025,³
 18 O.E.O.'s family sent the translated Tazkira to ORR. *See id.*; *see also* Dkt. 10, Ex. Z at
 19 110; *see also* ORR-AR-0458 (“Case manager inquired if the document labeled
 20 NATIONAL ID (TAZKIRA) sent on 5.7.2025 was original or if the document was
 21 translated from the English version originally sent prior. Child’s mother confirmed that
 22 the document . . . was a translation from the English document . . .”).

23 On May 19, 2025, Emily Benson with the state department emailed ORR with
 24 language allegedly copy and pasted from the AAU, stating that O.E.O.'s school records
 25 have no attestation from the Afghan Ministry of Education and that the “record suggests
 26 he began school at age 9, very unusual for Afghanistan.” *See* Dkt. 43-1 at Ex. 1, Ex. E.

27
 28 ³ May 8, 2025 in Afghanistan, which was May 7, 2025, in the United States.

1 The school record, however, has a stamp from the Ministry of Education, and reports that
2 O.E.O. ended his first year of school at the age of eight. *See* Dkt. 10 Ex. D; *see also*
3 Afghanistan Ministry of Education, available at <https://moe.gov.af/en> (last visited August
4 25, 2025); *See* Expert Report of Anwar Ul Haq in Support of Mr. O.E.O.’s Complaint
5 and Petition for Writ of Habeas Corpus (“Expert Report of Mr. Ul Haq”) at ¶¶49, 54.
6 O.E.O. started first grade late, at the age of seven, because he is disabled. *See* Dkt. 12 at
7 ¶4.

8 On May 21, 2025, Ms. Gast issued a second Age Re-Determination Memo,
9 finding O.E.O. was an adult. *See* Dkt. 10, Ex. B. In this Memo, Ms. Gast confirms that
10 O.E.O. initially reported his DOB as  2009, contradicting her declaration that
11 O.E.O. “stated that he was born on March 23, 2009.” Dkt. 43-1 at ¶6; *see also* Dkt. 10 at
12 Ex. A, B. In this Memo, Ms. Gast did not consider the declarations O.E.O.’s family
13 members submitted, his siblings’ national identification cards—one of whom was born
14 on March 18, 2003, and the other on March 23, 1999. *See* Dkt. 10, Ex. B. However, she
15 did rely on the AAU’s misreading of O.E.O.’s school record and failed to take into
16 consideration O.E.O.’s disability, despite ORR’s awareness of his disability. *Id.*; *see*
17 ORR-AR-0421 (O.E.O. is diagnosed with myopia and congenital/infantile nystagmus).
18 Nor did Ms. Gast consider the Tazkira obtained from NSIA, with blue ink handwriting.
19 *See* S.O. Decl. at Tab 2.

20 On May 21, June 2, and June 4, 2025, Ms. Fox sent emails to ICE requesting they
21 conduct their own age determination. *See* Dkt. 10, Ex. X; *see also* Alex Fox
22 Supplemental Declaration (“Fox Supp. Decl.”) at ¶5, 7-8. Based on the I-213 dated May
23 22, 2025, filed by Respondents on July 7, 2025, ICE did not conduct its own age
24 determination after Ms. Fox’s May 21st request. *See* Dkt. 29-1, Ex. A. Based on the I-
25 213 dated June 4, 2025, filed by Respondents as part of the AR, ICE did not conduct its

own determination after Ms. Fox's June 2nd or 4th requests.⁴ See ICE-AR-0044. ICE's AR also includes a G-166C prepared by Officer Hoffman, dated July 14, 2025, which claims that on June 4, 2025, ICE reviewed the "old evidence submitted by his attorney as no new evidence was submitted." ICE-AR-0051. Officer Hoffman is the same officer who, on June 3, 2025, told Ms. Fox he already knew O.E.O. was an adult and would not initiate an internal evaluation of the evidence she presented. See Dkt. 11 at ¶26.

On August 15, 2025, Respondents filed with this Court sworn testimony from Ms. Gast, which represented to this Court that the Tazkiras provided to the AAU were translated versions of O.E.O.'s Tazkira. See Dkt. 43-1, Ex.1 at ¶¶12-13; see also Dkt. 43-1 Ex. 1, Ex. C; S.O. Decl. at Tab 2. In other words, based on the AR and Ms. Gast's sworn declaration, it appears that the AAU never reviewed O.E.O.'s original Tazkira. Respondents also filed a "Final Age Determination" signed by Jason A. Ciliberti on August 7, 2025, which lists none of the evidence considered by ICE in its alleged age determination.⁵ See Dkt. 43-1, Ex. 3.

ARGUMENT

Respondents ORR and ICE have only doubled down on their legally deficient age determinations and have provided just as deficient post hoc rationalizations for their unlawful detention of O.E.O., a fifteen-year-old unaccompanied minor. Respondents have no response to O.E.O.'s arguments as to the flaws with their age redeterminations, and based on the administrative record, and sworn testimony of Ms. Gast, it is apparent that there is no contemporaneous explanation that justifies his age determination. In fact, Respondents' evidence has only bolstered O.E.O.'s claims that his detention is in violation of the TVPRA, the APA, the Flores Settlement Agreement, and his constitutional due process rights. Neither ICE nor ORR's age determinations can stand

⁴ It is unclear why Respondents filed the I-213 dated May 22, 2025, in response to O.E.O.'s TRO, when the more recent I-213, dated June 4, 2025, was available on the date of filing, July 7, 2025.

⁵ It is notable that ICE's "Final Age Determination" was completed *after* Respondents sought an extension from this Court to file their response and produce the administrative record.

1 because (1) ORR did not send the original Tazkira to the Afghanistan Affairs Unit
 2 (“AAU”); (2) the agencies’ post hoc justifications may not be considered; and (3) the
 3 agencies violated their own procedures for determining an individual’s age.

4 **I. Both ICE and ORR’s Age Determinations Cannot Stand Because They Do Not
 5 Rely on Petitioner’s Original Tazkira.**

6 ICE and ORR’s age determinations both rely heavily on the AAU’s assertion that
 7 O.E.O.’s paper “Tazkira, specifically the DOB section, appear to be digitally manipulated
 8 and fraudulent.” Dkt. 43-1, Ex.1, Ex.C; *see also* Dkt. 43-1, Ex. 1 at ¶13; G-166C at ICE-
 9 AR-0051. However, based on the administrative records and the Declaration of Ms.
 10 Gast, it is unclear whether the original version of O.E.O.’s Tazkira was ever sent to the
 11 AAU in the first place. *See* Dkt. 43-1, Ex. 1 at ¶13. Ms. Gast’s declaration represents to
 12 this Court that the two Tazkira’s sent to the AAU were the English translation of
 13 O.E.O.’s Tazkira, and a translation back into Dari. *Compare* Dkt. 43-1, Ex. 1 at ¶13 and
 14 Ex. C with S.O. Decl. at ¶14–15 and Tabs 2–6. ORR and ICE unlawfully determined
 15 O.E.O. to be an adult based on AAU’s faulty assessment, which relied exclusively on
 16 translated versions of O.E.O.’s Tazkira rather than on an original.⁶ *See* Dkt. 10, Ex. B.

17 “[T]he touchstone of ‘arbitrary and capricious’ review under the APA is ‘reasoned
 18 decisionmaking.’” *Altera Corp. & Subsidiaries v. Comm’r of Internal Revenue*, 926 F.3d
 19 1061, 1080 (9th Cir. 2019). Where the agency has “offered an explanation for its
 20 decision that runs counter to the evidence before the agency,” that agency action is
 21 deemed arbitrary and capricious, and must be set aside. *See Immigrant Defs. L. Ctr. v.*
 22 *U.S. Dep’t of Homeland Sec.*, No. CV 21-0395 FMO (RAOX), 2025 WL 1191572 at *14
 23 (C.D. Cal. Mar. 14, 2025) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm*
 24 *Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)) (internal quotations omitted). Here, ORR
 25 presented translated versions of O.E.O.’s Tazkira to the AAU as “originals” to be

26 ⁶ As argued *infra* at II., it is O.E.O.’s position that ICE has still failed to conduct any age
 27 determination. Insofar as it claims it has on the G-166C and the August 7, 2025 Final
 28 Age Determination, the administrative record makes clear it relied on the AAU’s faulty
 statements. *See* ICE AR-0051; *see also* Dkt. 43-1, Ex. 3.

1 reviewed for authenticity. Dkt. 43-1, Ex. 1 at ¶13 and Ex. C. It should come as no
2 surprise that the AAU found the Tazkira to appear digitally manipulated. ORR and ICE
3 then used this rationale for its decision even though it runs counter to the original
4 Tazkira, written in blue ink, which presents O.E.O.'s DOB as October 24, 2009.

5 The ORR's reliance on the authentication of a non-original document to determine
6 whether O.E.O. is an adult was arbitrary and capricious. ICE for its part conducted no
7 age determination, but to the extent it claims it did, ICE also relied on the AAU's faulty
8 assessment, and that too was arbitrary and capricious. The agencies' mishandling of
9 evidence and reliance on the AAU's statement is reason enough to set aside their age
10 determinations.

11 **II. The Agencies' Post Hoc Rationales for O.E.O.'s Age Determination Cannot Be
12 Considered by this Court.**

13 The government attempts to assert post hoc justifications for its decision to age
14 redetermine O.E.O., which is impermissible. The Supreme Court has established the
15 basic rule applicable here: "An agency must defend its actions based on the reasons it
16 gave when it acted." *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140
17 S. Ct. 1891, 1909 (2020). Additionally, in "reviewing agency action, a court is ordinarily
18 limited to evaluating the agency's contemporaneous explanation in light of the existing
19 administrative record." *See, e.g., Dep't of Com. v. New York*, 588 U.S. 752, 780 (2019).
20 This principle ensures that agencies provide genuine justifications for their decisions that
21 can be scrutinized by both the courts and the public. *Id.*

22 Here, the agencies' post hoc rationalizations are impermissible and cannot substitute
23 for the agency's original articulation of the basis for its decision. *Id.* "Respondents' post
24 hoc justifications on alternative bases for their age determination are contrary to the law
25 and fail properly to consider the totality of other evidence probative of [O.E.O.]'s
26 minority, including his [family members' declarations] and [circumstances surrounding
27 the authenticity of documents]." *N.B. v. Barr*, 2019 WL 4849175, at *10 (S.D. Cal. Oct.
28 1, 2019). The government attempts to cure the defects in its age determinations, which

1 should have taken place between May 21, 2025, and June 4, 2025,⁷ by way of
 2 explanations that appear to be created on July 14, 2025, and August 4, 2025, after both
 3 the habeas petition and motion for a temporary restraining order were filed. The issues
 4 with each agency's post hoc justifications are taken in turn below.

5 **A. ICE's Post Hoc Justifications Should Be Rejected by This Court**

6 ICE should have conducted its own age determination when O.E.O. was
 7 transferred to their custody on May 21, 2025, but failed to do so. ERO Juvenile
 8 Coordinator Handbook § 1.3.2; *see also* Dkt. 29-1 at Ex. A, I-213 dated May 22, 2025.
 9 ICE must also "promptly evaluate new information regarding the age of the individual in
 10 ERO custody if presented by the individual or his/her legal representative," and use Form
 11 I-213 to document information relied upon to determine age. *See* ERO Juvenile
 12 Coordinator Handbook § 3.1.2, n. 18. Based on the I-213 dated June 4, 2025, ICE failed
 13 to do so. *See* ICE-AR-0044; *see also* Dkt. 11, Fox Decl. at ¶26; Fox Supp. Decl. at ¶5–
 14 10. The only evidence of an alleged age determination is documented on Form G-166C,
 15 dated July 14, 2025, which states that on June 4, 2025, ICE ERO reviewed "old
 16 evidence" of O.E.O.'s minority. ICE-AR-0051, Form G-166C. The date on this form
 17 makes clear that ICE did not make any assessment when it should have, on May 21, June
 18 2, or June 4, 2025, and that any assessment done after those dates did not conform with
 19 the TVPRA and ICE's policies and procedures. Thus, on all fronts, ICE's post hoc
 20 justifications cannot suffice. *Regents*, 140 S. Ct. at 1909.*see also infra* at III.A.

21 **B. ORR's Post Hoc Justifications Should be Rejected by This Court**

22 Ms. Gast alleges for the first time in her August 4, 2025 declaration that she did
 23 not find O.E.O.'s families "declarations to be persuasive in light of other documentary
 24 evidence," but then also claims ORR did not receive the declarations until June 10, 2025.
 25 Dkt. 43-1 at ¶21; *cf.* Ex. 10, Tab Z at 109 (showing O.E.O.'s family sent declarations to
 26

27 ⁷ O.E.O.'s immigration attorney, Alex Fox, three times requested ICE complete an age
 28 determination in accordance with regulatory and statutory guidelines, first on May 25, a
 second time on June 2, 2025, and a third time on June 4, 2025. Fox Supp. Decl. at ¶5–10.

1 Mr. Ortiz Cruz via WhatsApp prior to May 8, 2025), Tab F, G, I, and J (declarations of
 2 O.E.O.'s family members, all dated May 7, 2025). It is unclear which statement is true.
 3 Regardless, Ms. Gast did not follow ORR Policy Guidance and either failed to consider
 4 this evidence or to provide contemporaneous reasoning for disregarding this evidence in
 5 her May 1 and her May 21 Age Determination Memos. *See generally* Dkt. 10, Exs.A,
 6 B.; *see also* ORR Policy Guidance § 1.6.2. This post hoc justification thus cannot be
 7 considered by the Court. *See, e.g., Regents*, 140 S. Ct. at 1909.

8 Ms. Gast also states that O.E.O. claimed that “his real passport and National ID
 9 card with his correct date of birth of March 23, 2009, were stolen in Panama.” Dkt. 43-1,
 10 Ex. 1 at ¶5. However, there is no evidence in the record that supports this statement, nor
 11 is it mentioned in either of Ms. Gast’s age determination memos.⁸ The only passport and
 12 National ID O.E.O. presented were copies of the ones with the March 21, 2003 DOB,
 13 which O.E.O. has consistently stated were authentic documents obtained using a fake
 14 DOB, and that the originals were lost in the Panama jungle, not stolen. ICE-AR-0008.

15 The agencies’ post-hoc rationalizations presented by the agencies are therefore
 16 insufficient and should not be considered. *See, Regents*, 140 S. Ct. 1891, 1909 (2020).

17 **III. Respondents’ Age Determinations Fail to Comply with the Law**

18 Contrary to Respondents’ framing, O.E.O. is not asking this Court to reweigh
 19 evidence, ignore evidence, or reject ORR and ICE’s evaluation of this evidence. Dkt. 43
 20 at 11. The record demonstrates that ORR failed to follow its own regulations in its age
 21 determination, and that ICE failed to conduct any independent age determination at all.
 22 O.E.O. is merely asking for both agencies to comply with their obligations under their
 23 respective handbooks, and in accordance with the TVPRA, the *Flores* Settlement
 24 Agreement (“FSA”), the Administrative Procedure Act (“APA”), and the U.S.
 25 Constitution.⁹ *See* Dkt. 1 at ¶¶81–109. Substantial evidence does not support the

26 ⁸ Ms. Gast’s Memos also state that O.E.O. initially reported his DOB as Oct. 24, 2009,
 27 but her declaration states he reported March 23, 2009. *Compare* Dkt. 10, Ex. A, B with
 Dkt. 43-1 at ¶6; *see also* O.E.O. Supp. Decl. at ¶5.

28 ⁹ As to O.E.O.’s Seventh and Eight claims, O.E.O. is now in INA § 240 proceedings.

1 agencies' age determinations. Instead, the evidence compels a reasonable fact finder to
2 conclude that there is insufficient evidence to support the agencies' determinations that
3 O.E.O. is an adult. *See Herrera v. U.S. Citizenship & Immigr. Servs.*, 571 F.3d 881, 885
4 (9th Cir. 2009). Each agency's errors are taken in turn.

5 **A. ICE's Post Hoc Rationalizations for Its Age Determination Fail to**
6 **Follow Agency Procedures**

7 Should this Court accept ICE's post hoc age determinations, O.E.O. still prevails
8 on his claims against ICE because ICE failed to abide by two crucial obligations under
9 the ERO Juvenile Coordinator Handbook § 3.1.2. First, the FOJC must "document[] *all*
10 *information* relied upon to determine age . . . using Form I-213..., Form G-166C," or a
11 memorandum. *Id.* (emphasis added). ICE is required to consider "the totality of all
12 available evidence", including statements from O.E.O. himself, official government-
13 issued documents, school records, medical records, statements from individuals who have
14 personal knowledge of O.E.O.'s age, and the non-exclusive use of dental radiographs if
15 they take "into account the individual's ethnic and genetic background." *Id.*

16 The AR lacks any documentation of the evidence ICE relied on its alleged age
17 determination. Respondents have submitted two I-213s into the record: (1) I-213 dated
18 May 22, 2025; and (2) I-213 dated June 4, 2025. *See* Dkt. 29-1, Ex. A; *see also* ICE-AR-
19 0043. Neither I-213 makes any mention of an age determination, despite being prepared
20 when O.E.O. was taken into custody by ICE and after O.E.O.'s attorney, Ms. Fox, thrice
21 asked ICE to evaluate his minority. *See* Dkt. 29-1, Ex. A; *see also* ICE-AR-0043; Fox
22 Supp. Decl. at ¶5, 7, 9.

23 As to the G-166C prepared by Officer Hoffman on July 14, 2025, and the "Final
24 Age Determination" prepared on August 7, 2025, by Officer Ciliberti, those too are
25 deficient. *See* ICE-AR-0051, G-166C; *see also* Dkt. 43-1, Ex. 3. Officer Hoffman's
26 memorandum fails to specify any evidence beyond the AAU's assessment of O.E.O.'s
27 three government identifications. *See* ICE-AR-0051. Further, on June 3, 2025, Officer
28 Hoffman explicitly told Ms. Fox he was unwilling to "initiate an internal evaluation of

1 the evidence presented.” Dkt. 11, Fox Decl. at ¶26.

2 Officer Ciliberti’s Age Determination from August 7, 2025, must also be rejected
3 because it makes no mention of any evidence considered aside from stating “I reviewed
4 all submitted evidence.” *See* Dkt. 43-1, Ex. Given ICE does not indicate what evidence it
5 took into consideration and only provides an assessment made long after the
6 Complaint/Petition and TRO were filed, this Court must find that ICE’s age
7 determinations have violated the requirements of the TVPRA, the APA, and O.E.O.’s
8 constitutional right to due process. *See Altera Copr. & Subsidiaries*, 926 F.3d at 1074
9 (“[T]he touchstone of ‘arbitrary and capricious’ review under the APA is ‘reasoned
10 decisionmaking.’”); *see also United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260,
11 268 (1954); *Immigrant Defs. L. Ctr.*, 2025 WL 1191572, at *14 (finding the TVPRA
12 statutory entitlements for unaccompanied children are constitutionally protected property
13 interests).

14 Second, the Handbook requires the Field Office Director to “promptly evaluate
15 new information regarding the age of the individual in ERO custody if presented by the
16 individual or his/her legal representative.” ERO Juvenile Coordinator Handbook § 3.1.2.
17 In his G-166C, Officer Hoffman claims that “ICE ERO reviewed the **old evidence**
18 submitted by his attorney as **no new evidence** was submitted.” *See* ICE-AR-0051
19 (emphasis added). It’s unclear what Officer Hoffman considered “old evidence,” but that
20 statement in and of itself suggests ICE failed to consider “the totality of the evidence.”
21 ERO Juvenile Coordinator Handbook § 3.1.2. If by “old evidence,” ICE means only the
22 three forms of ID listed in the G-166C, he failed to consider all the evidence submitted by
23 Ms. Fox to ICE. *See* Dkt. 10, Ex. X; *see also* Dkt. 11, Decl. of Alex Fox at ¶24, 26. If he
24 considered the same evidence as that documented by ORR in its memos, that too is
25 deficient because, as argued *infra*, ORR failed to consider multiple pieces of evidence
26 and the totality of the circumstances—i.e., O.E.O.’s original Tazkira, O.E.O.’s doctor
27 statement and school record, the declarations from O.E.O.’s siblings, and O.E.O.’s
28

1 sister's National ID.

2 **B. ORR Failed to Consider “the Totality of the Circumstances and**
 3 **Evidence” Establishing O.E.O.’s Minority.**

4 Respondent ORR offers no explanation or evidence to refute the substantive flaws
 5 in their age determination analysis. O.E.O. argued that ORR’s May 21 Memo is deficient
 6 in four ways: (1) it fails to consider five pieces of evidence in support of O.E.O.’s
 7 minority; (2) it fails to consider the totality of O.E.O.’s circumstances and thus
 8 improperly rejects O.E.O.’s school records and doctor’s statement; (3) it fails to consider
 9 the totality of the circumstances or the evidence with respect to O.E.O.’s three forms of
 10 national identity and the statements of the AAU; and (4) it improperly relies on a dental
 11 examination that does not “take into account [O.E.O.’s] ethnic and genetic background.”
 ORR Policy Guidance § 1.6.2.

12 First, Respondents still have not explained why O.E.O.’s sister’s national ID card
 13 was not considered by the agency or sent to the AAU for authentication. *See* Dkt. 10, Ex.
 14 K, B.O.’s National ID Card; *see also* Dkt. 10, Ex. Z at 108 (showing that the national IDs
 15 of O.E.O.’s siblings were sent to Mr. Ortiz Cruz on April 15, 2025); S.O. Decl. at ¶14.
 16 The physical impossibility of O.E.O. having been born on March 21, 2003, when his
 17 sister was born just three days prior on March 18, 2003, is evidence that makes ORR’s
 18 conclusion that O.E.O. is an adult “so implausible,” it cannot “be ascribed to a difference
 19 in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n of U.S.*, 463 U.S.
 20 at 43. Also as argued *supra* at II. B., Ms. Gast’s declaration contains conflicting
 21 information as to the family declarations. It’s unclear if she ever reviewed the
 22 declarations but if she did and rejected them, that should have been documented in her
 23 May 21 Memo. It was not. *See* ORR Policy Guidance § 1.6.2.

24 Second, Ms. Gast erroneously rejected O.E.O.’s “medical record” even though it
 25 was a sworn declaration, prepared at the request O.E.O.’s ORR case workers. *See* Dkt.
 26 10, Ex. B; *see also* S.O. Decl. at ¶ 17. As to the school record, the AAU discounts the
 27 evidence based on two incorrect statements. The AAU claims there’s “no attestation
 28

1 from the Ministry of Education,” despite the fact that the stamp on bottom left corner of
 2 the school record matches that of the Afghan Ministry of Education. *See* Dkt. 10, Ex. D;
 3 *see also* Afghanistan Ministry of Education, available at <https://moe.gov.af/en> (last
 4 visited August 25, 2025). Indeed, according to country conditions expert, Mr. Anwar Ul
 5 Haq, O.E.O.’s school record is “consistent in form, structure, and markings with
 6 authentic documents issued in Afghanistan.” Expert Report of Mr. Ul Haq at ¶¶49, 54.
 7 The AAU also incorrectly claims that “the school record suggests he began school at age
 8 9.” *See* Dkt. 43-1 at ¶18. Not so. The school record clearly states that O.E.O. finished
 9 first grade in 2018, which would have made O.E.O. 8 years old when he completed first
 10 grade, and seven years old when he started the school year. O.E.O. also declared that he
 11 did start school a little bit later than most Afghan children because he is disabled in one
 12 eye. *See* Dkt. 12, O.E.O. Decl. at ¶4. Thus, the AAU and ORR’s explanations for
 13 discounting O.E.O.’s school record and doctor’s declaration reflect a failure to consider
 14 the “totality of the circumstances,” in violation of the ORR’s internal policy and the
 15 TVPRA, and clearly run “counter to the evidence before the agency.” *Motor Vehicle*
 16 *Mfrs. Ass’n of U.S., Inc.*, 463 U.S. at 43; *see also* ORR Policy Guidance § 1.6.2
 17 (requiring ORR take into consideration the “totality of the circumstances”).

18 Third, it is clear that Ms. Gast’s age determination did not consider the totality of
 19 the circumstances with respect to O.E.O.’s three forms of National ID because the AAU’s
 20 authentication of these documents is not determinative of O.E.O.’s true age. It is
 21 unsurprising that the AAU found the photographs of O.E.O.’s passport and national ID
 22 with a false DOB to “appear to be genuine” because O.E.O. has consistently maintained
 23 that they are high quality documents, but that he used an incorrect birth date to obtain
 24 them. ICE-AR-0008; *see also* Dkt. 12, O.E.O. Decl. at ¶6. Ms. Gast’s decision does not
 25 consider O.E.O.’s statements surrounding how he obtained his passport and national ID,
 26 or the expert evidence that youth in Afghanistan obtain documents that appear authentic
 27 in order to flee Afghanistan violated her obligation to consider the “totality of the
 28

1 circumstances and evidence.” ORR Policy Guidance § 1.6.2; *see also* Dkt. 10, Ex. P
 2 (email exchange between Ms. Gast and Ms. Fox with expert testimony regarding the
 3 common practice of Afghan youth obtaining official documents by misrepresenting their
 4 age). If she did consider this evidence, Ms. Gast again fails to give any reasoned decision
 5 as to why she discounted it. *Altera Corp. & Subsidiaries*, 926 F.3d at 1080.

6 Fourth, Respondents do not refute that the dental examination does not adhere to
 7 agency guidelines because the exam did not consider O.E.O.’s ethnic and genetic
 8 background and therefore does not comply with 8 USC 1232(b)(4). *See V.V. v. Orozco*,
 9 No. CV 20-560 KG/CG, 2020 WL 3542480, at *9 (D.N.M. June 30, 2020) (holding
 10 unaccompanied child likely to succeed on merits of case where medical exam did not
 11 state whether Petitioner’s ethnic and genetic background was considered); *see also N.B.*
 12 *v. Barr*, 2019 WL 4849175 (finding petitioner likely to succeed on merits of claim that
 13 ICE improperly found petitioner was an adult based on dental radiograph).

14 **C. Respondents’ Failure to Comply with the TVPRA and their Internal**
 15 **Policies and Procedures Violates the APA and the Constitution.**

16 Agency action is arbitrary and capricious where it has “relied on factors which
 17 Congress has not intended it to consider, entirely failed to consider an important aspect of
 18 the problem, offered an explanation for its decision that runs counter to the evidence
 19 before the agency, or [an explanation that] is so implausible that it could not be ascribed
 20 to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Assn.,*
 21 *Inc.*, 463 U.S. at 43. As argued *supra*, Respondents have failed in all the aforementioned
 22 ways. *Id.* The requirement of a reasoned explanation “is satisfied when the agency’s
 23 explanation is clear enough that its path may reasonably be discerned. But where the
 24 agency has failed to provide even that minimal level of analysis, its action is arbitrary and
 25 capricious and so cannot carry the force of law.” *Immigrant Defs. L. Ctr.*, 2025 WL
 26 1191572, at *14 (internal citation and quotation marks omitted). O.E.O. does not ask this
 27 court to “reweigh the evidence.” Dkt. 43 at 11. O.E.O. is simply asking the agency to
 28 consider the evidence in the first instance, as is required by law.

As to O.E.O.'s substantive and procedural due process constitutional claims, Respondents argue O.E.O.'s detention does not "shock[] the conscience," because "[n]othing about FFS Gast's or DFOD Ciliberti's actions demonstrate a deliberate indifference toward Petitioner's constitutional rights." Dkt. 43 at 12. They also argue that O.E.O. has "not shown the procedures used by Respondents were insufficient." *Id.* at 14. To start, the unlawful detention of a child should shock the conscience of any person, but especially in light of the egregious agency actions detailed above. ORR for its part could not have considered the "totality of the circumstances and evidence" given they sent the wrong Tazkira to the AAU for authentication, they failed to consider multiple pieces of evidence establishing O.E.O.'s minority, they misread O.E.O.'s school record, and the post-hac rationalizations in Ms. Gast's August 4 declaration contain numerous inconsistencies when compared to her May 1 and May 21 Memos. *See supra.* As to ICE, a complete failure, and refusal, to conduct an age determination after three requests from O.E.O.'s attorney is evidence that ICE's actions were taken with "deliberate indifference towards [O.E.O.'s] constitutional rights." *See* Dkt. 43 at 12 (citing to *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998)).

For the reasons stated above, this Court should set aside ORR and ICE's alleged age determinations and order O.E.O.'s release from ICE custody.

IV. This Court Can and Should Order the Relief Sought

Respondents argue that this Court cannot order ORR to find that O.E.O. is a minor, or order release to his uncle within 72 hours. Dkt. 43 at 17. However, Respondents misrepresent what O.E.O. asks for and are wrong on the law. Ultimately, O.E.O. is requesting this Court find the agencies' age determinations violate his APA, statutory, and constitutional rights. O.E.O. asks this Court to find the age determinations were unlawful as well as arbitrary and capricious, and to enjoin Respondents from applying this age determination as the basis for their custody determinations. As detailed in O.E.O.'s Complaint/Petition, the TVPRA requires agencies to develop and comply

1 with age determination procedures and transfer to HHS custody any juvenile found to be
 2 a minor. *See* Dkt. 1 at ¶64-79; 8 U.S.C. § 1232(b)(3)-(4). O.E.O. seeks injunctive and
 3 declaratory relief, “both of which are proper habeas remedies,” and “seeks no damages
 4 pursuant to *Bivens v. Six Unknown Named Agents*, 403 U.S. 38, 91 S. Ct. 1999 (1971),”
 5 therefore this Court may grant the requested relief. *See N.B. v. Barr*, 2019 WL 4849175
 6 *7; *see also* 28 U.S.C. § 2243 (“The court shall . . . dispose of the matter as law and
 7 justice require.”).¹⁰

8 Based on the record, it is clear that ORR and ICE have not followed their
 9 regulatory, statutory, or constitutional obligations. If any facts remain in dispute, O.E.O.
 10 respectfully requests that this Court hold an evidentiary hearing.¹¹ O.E.O. is a minor and
 11 simply asks to be placed in the least restrictive setting in compliance with the law.

12 CONCLUSION

13 For the foregoing reasons, this Court should grant the aforementioned relief or
 14 hold an evidentiary hearing.

15
 16 Respectfully submitted on August 25, 2025.

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25
 26 ¹⁰ Petitioner maintains that Respondents violated the Prison Rape Elimination Act
 27 National Standards, which prohibit youth from being detained a housing unit “with any
 adult inmate...” because he is, in fact, a minor. 28 C.F.R. § 115.14(a).

28 ¹¹ The habeas statute directs district courts to “hear and determine the facts” and “dispose
 of the matter as law and justice require.” 28 U.S.C. § 2243.