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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

S.R.I.,

Petitioner,

v.

CHRISTOPHER J. LAROSE, Warden, Otay Mesa Detention Center; DANIEL BRIGHTMAN, Field Office Director, San Diego Field Office, United States Immigration and Customs Enforcement; DAVID J. VENTURELLA, Acting Director, United States Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of Homeland Security; TODD BLANCHE, Acting United States Attorney General, *in their official capacities*,

Respondents.

Civil Action No.:

'26CV4547 LEK MMP

PETITION FOR WRIT OF HABEAS CORPUS

PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner S.R.I.,[1] 17-year-old native of Ethiopia, is unjustly detained in Respondents' custody in an adult detention facility—Otay Mesa Detention Center—in violation of his constitutional and statutory rights. Respondents wrongly contend that he is an adult.
2. S.R.I. fled Ethiopia alone to escape targeted attacks and torture and traveled to the United States in search of safety from future persecution. Upon entry to the United States in early May 2026, S.R.I. repeatedly reported to Customs and Border Patrol (CBP) and later Immigration and Customs and Enforcement (ICE) agents that he was 17 years old and presented government-issued documentation showing the same.
3. Despite producing clear proof of his age, Respondents unjustifiably cast doubt upon the fact that he was a minor and ordered a Dental Age Assessment by a forensic odontologist to assess his age. The forensic odontologist reviewed S.R.I.'s dental x-rays and compared the stage of his teeth to a reference database of two groups of Black Americans. The Assessment found that the age interval in the reference database for someone with teeth in the same stage as S.R.I. was 17.27 and 23.09 years old with a mean estimated age of 20.18. The mean estimated age is the average age of individuals with the same stage of teeth in the reference group. The Assessment also stated that there is a 93.45% that S.R.I. is over 18.

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[1] Because he is a minor, Petitioner is referred to by his initials, in compliance with Fed. R. Civ. P. 5.2(a)(3). All exhibits have similarly been redacted of Petitioner's name, day and month of birth, photo, A number, and other personally identifiable information. If the Court would like an unredacted copy of any exhibit, Petitioner requests that he be able to file under seal pursuant to Fed. R. Civ. P. 5.2(d). *See, e.g., L.P. by & through Yamin B. v. Bella Mente Montessori Acad.*, 2023 WL 4280800, at *2 (S.D. Cal. June 29, 2023). Prior to filing the petition, Petitioner shared unredacted copies of the exhibits with the Assistant United States Attorney.

4. Respondents' own policies recognize that dental age assessments are imprecise tools and the scientific literature and review by a number of experts make clear that they are unreliable to estimate whether someone has reached the age of majority.
5. Nonetheless, Respondents relied solely on this dental x-ray, inexplicably ignoring the other evidence, and asserted, incorrectly, that S.R.I. is an adult.
6. S.R.I. is an unaccompanied child; his parents are deceased. Because he is an unaccompanied child, the law requires that he be held in the least restrictive setting in his best interest: with his sponsor or, at minimum, in custody of the Office of Refugee Resettlement (ORR), which cares for unaccompanied children in U.S. immigration custody.
7. S.R.I. petitions for habeas relief under 28 U.S.C. § 2241 to challenge his unlawful detention with adults in a secure facility because by detaining S.R.I. at Otay Mesa Detention Center, Respondents violate the Trafficking Victims Protection Reauthorization Act, the Settlement Agreement under *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997), the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment of the U.S. Constitution.
8. The Court should issue the writ of habeas corpus, vacate Respondents' unlawful age determination and order that Respondents release S.R.I. from Otay Mesa Detention Center and facilitate his placement in the least restrictive setting in his best interest: to his sponsor or to ORR custody, with direction that ORR promptly process his release to his sponsor.

CUSTODY

9. Petitioner is imprisoned at Otay Mesa Detention Center, an immigration detention facility in San Diego, California, under the direct control of Respondents and their agents. Respondents have detained him there since early May 2026.

JURISDICTION

10. This Court has jurisdiction to entertain this habeas petition under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2241 (habeas corpus); the Due Process Clause of the Fifth Amendment, U.S. Const. amend. V; and the Suspension Clause, U.S. Const. art. I, § 9, cl. 2.

11. This action is also brought under the Administrative Procedure Act (APA). Jurisdiction is proper under the judicial review provision of the APA. 5 U.S.C § 702.

12. The Court has jurisdiction to issue a variety of remedies under 8 U.S.C. § 2201 (Declaratory Judgment Act) and 28 U.S.C. § 1651 (All Writs Act).

VENUE

13. Venue is proper in this District because S.R.I. is detained within this District at Otay Mesa Detention Center. 28 U.S.C. § 2242; *Doe v. Garland*, 109 F.4th 1188, 1198 (9th Cir. 2024) (holding that venue lies in the district of confinement).

PARTIES

14. Petitioner S.R.I. is a 17-year-old unaccompanied child currently detained in Respondents' custody at Otay Mesa Detention Center, an adult ICE detention center. He has been detained by Respondents since approximately May 5, 2026.

15. Respondent Christopher J. LaRose is the Warden of Otay Mesa Detention Center, where S.R.I. is currently detained. He is a legal custodian of S.R.I and is named in his official capacity.

16. Respondent Daniel Brightman is the Field Office Director responsible for the San Diego Field Office of ICE with administrative jurisdiction over S.R.I.'s immigration case. He is a legal custodian of S.R.I. and is named in his official capacity.

17. Respondent David J. Venturella is the Acting Director of United States Immigration and Customs Enforcement (ICE), the agency detaining S.R.I. He is a legal custodian of S.R.I. and is named in his official capacity.

18. Respondent Markwayne Mullin is the Secretary of the United States Department of Homeland Security (DHS). He is a legal custodian of S.R.I. and is named in his official capacity.

19. Respondent Todd Blanche is the Acting Attorney General of the United States Department of Justice. He is a legal custodian of S.R.I. and is named in his official capacity.

REQUIREMENTS OF 28 U.S.C. § 2243

20. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return within three days, or within twenty days for good cause shown. *Id.*

21. Petitioner requests that the Court adopt Chief Judge Order No. 144, Standard Procedures for Immigration Habeas Petitions (Mar. 9, 2026), for an expeditious resolution of this petition.

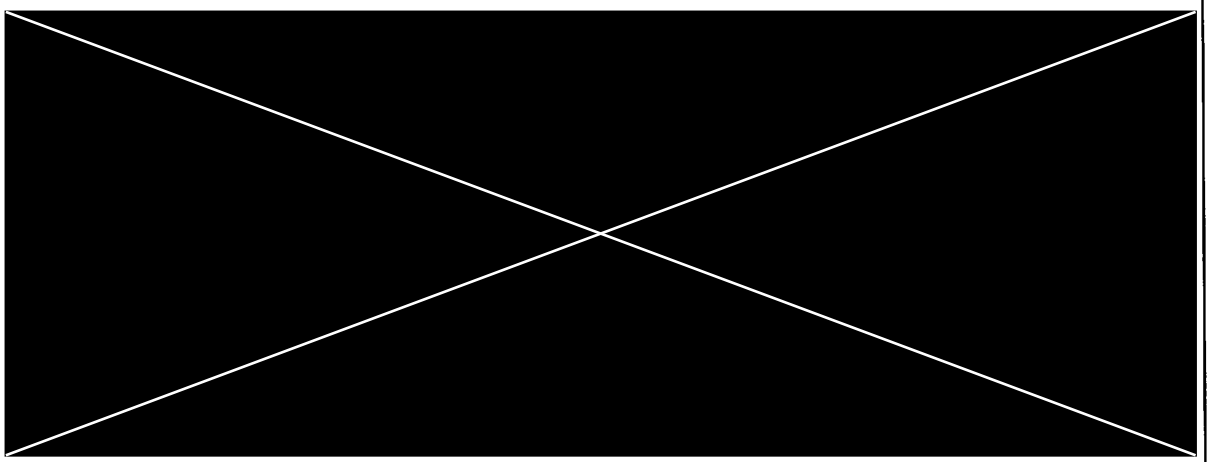
22. Because "special solicitude" is due in cases of illegal restraint or confinement, "[t]he application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him[.]" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

STATEMENT OF FACTS

23. S.R.I., a native of Ethiopia and ethnic Somali, is 17 years old. Ex. A (Petitioner's Declaration) ¶ 1. He was born in the [redacted].[2] *Id.* His mother died when he was two years old, and his father died in September 2024. *Id.* ¶ 3. He has no legal guardian.

24. S.R.I. fled Ethiopia in fear of his life when he was 16 years old. *Id.* ¶¶ 5-9, 13. [redacted]

[2] Petitioner omits the month and day of his date of birth in compliance with Fed. R. Civ. P. 5.2(a)(2).



25. S.R.I.'s father and his father's friend made arrangements for S.R.I. to flee Ethiopia by working with a broker to get him a passport. *Id.* ¶¶ 10-12. S.R.I. was not involved in applying for the passport. *Id.* The passport included S.R.I.'s correct biographic information except that his date of birth was altered to make him seem older. *Id.* ¶ 11.

26. S.R.I. learned that the passport had a false age for the first time when he was given the passport itself. *Id.* His father's friend explained that he would not be permitted to leave Ethiopia if his passport showed that he was a minor and told S.R.I. he should not be nervous about it.[3] *Id.* S.R.I. was not permitted to keep the passport in his possession until soon before his father's friend told him it was time to leave the country. *Id.* ¶¶ 12-13. S.R.I. left Ethiopia in February of 2026. *Id.* ¶ 13.

27. The smugglers who transported S.R.I. took the passport from him immediately before he entered the United States, telling him it would cause him trouble. *Id.*

28. After crossing into the United States on approximately May 5, 2026, S.R.I. waited for Border Patrol officers to find him. *Id.* ¶ 14. When asked about himself and his

[3] An attorney for Human Rights Watch explained to the LA Times that "it's common for migrant children to travel with fake passports that make them appear older, because in some countries minors are more likely to be intercepted or questioned by immigration agents." Brittny Mejia & Kate Morrissey, *U.S. Is Using Unreliable Dental Exams to Hold Teen Migrants in Adult Detention*, LA Times (June 2, 2019), https://www.latimes.com/local/lanow/la-me-ln-immigrant-age-migrants-ice-dental-teeth-bangladesh-20190602-story.html.

travels, S.R.I. consistently reported his correct age—17—and year of birth—2009. *Id.* ¶¶ 14, 16, 18, 22. He presented his birth certificate and his Ethiopian ID which showed his correct date of birth in both the Ethiopian and Gregorian calendars. *Id.* ¶ 14; Ex. C (Birth Certificate); Ex. D (Ethiopian ID). In the Ethiopian calendar, S.R.I.'s year of birth is 2001 but in the Gregorian calendar, the one we use in the United States, his year of birth is 2009, making him 17 years old.[4] *See* Exs. C-D. These documents have been in Respondents' possession since early May.

29. Ethiopia does not use the Gregorian calendar.[5] Ex. A ¶ 1. The Ethiopian calendar is a little less than eight years behind the Gregorian calendar and includes thirteen months that do not match those in the Gregorian calendar.[6] S.R.I.'s Ethiopian ID lists his date of birth in the two different calendars next to each other. Ex D. His birth certificate lists his date of birth in the Gregorian calendar with the date in the Ethiopian calendar below it. Ex. C.

30. The officers asked him about the documents he traveled with, so S.R.I. explained that he had used a passport with a different age that the smugglers had taken from him before he entered the United States. *Id.* ¶ 14.

31. CBP transported S.R.I. between two locations at least twice and questioned him at least three times about his age and documents. *Id.* ¶¶ 14-16.

32. Twice, a few officers woke S.R.I. while he was sleeping and questioned him in the middle of the night in the hallway outside the bunk room, while he was still

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[4] Online applications translating Gregorian calendar dates to Ethiopian calendar dates confirm that spring 2009 in the Gregorian calendar aligns with 2001 in the Ethiopian calendar. *See, e.g.*, Ethiopian Calendar Converter, ethiopiacalendar.com (last visited Aug. 5, 2026).

[5] Tamara Hardingham-Gill, *The Country Where It's Still 2016*, CNN (June 16. 2024), https://www.cnn.com/travel/ethiopian-unique-calendar-year; Brendan Rascius, *It's Still 2016 in This Country Thanks to Its Unique Calendar System*, Miami Herald (Apr. 11, 2024), https://www.miamiherald.com/news/nation-world/world/article287559970.html.

[6] *Id.*

groggy. *Id.* ¶¶ 15-16. On both of these occasions, the officers threatened S.R.I. that he would be sent to jail if he continued to say he was 17. *Id.* They told him that if he said he was 25, nothing would happen. *Id.* They told him he did not physically look 17-years-old, that he was lying, and that his documents were fake. *Id.* S.R.I. consistently responded that he was 17 years old. *Id.* ¶ 16.

33. No interpreter was present in-person or on the phone during any of these interactions. *Id.* ¶¶ 14, 16. Rather the officers interrogated S.R.I. in English with the help of a text-based translation app in which they and S.R.I. typed some words and phrases. *Id.* S.R.I.'s English proficiency is basic. *Id.* ¶ 2.

34. After a few days in CBP custody, officers shackled S.R.I.'s hands and feet together and transported him to ICE custody at Otay Mesa Detention Center. *Id.* ¶ 17. [redacted] the ankle cuffs were painful. *Id.* S.R.I. asked the officer transporting him if they would release the restraints on his ankles because it was hurting him, but the officer refused. *Id.*

35. Once in ICE custody, S.R.I. again stated that he was 17. *Id.* ¶ 18. In response to questioning, he explained again that he had traveled with a passport with an incorrect age that his father and father's friend obtained for him. *Id.* He repeated what his father's friend told him, that he would not be permitted to leave Ethiopia if his passport had indicated he was a minor. *Id.*

36. ICE then informed S.R.I. that he would go to a dentist. *Id.* ¶ 19. During the dental visit at the detention center, someone in plain clothes had S.R.I. sign a document. *Id.* Though there was an interpreter, S.R.I. did not understand what the document meant and signed, assuming it had something to do with his toothache. *Id.* ICE or an ICE contractor took dental x-rays. *Id.*

37. ICE then sent the radiographs to David R. Senn, a licensed forensic odontologist in San Antonio, TX, for an age assessment.[7] David R. Senn later produced a Dental Age Assessment Report stating that it used the Demirjian method.[8] Ex. B. The Report lists S.R.I.'s name incorrectly, as I.S.R., and lists his reported date of birth as [redacted]. *Id.* It is not clear where this date comes from; it is not S.R.I.'s date of birth in the Gregorian or Ethiopian calendar, as listed on his identity documents. Ex. C (Birth Certificate); Ex. D (Ethiopian ID). The day, month, and year are all incorrect.

38. By comparing his analysis of S.R.I.'s dental x-ray with a study of Black Americans from Tennessee and Arkansas, David R. Senn produced an "estimated mean age" for S.R.I., an age interval, and a percentage supposedly reflecting the likelihood that S.R.I. is over 18. Ex. B. The Report lists the mean estimated age—the average of the ages of individuals in the reference study of Black Americans with teeth in the same stage as S.R.I.—as 20.18 years. *Id.* The age interval—covering two standard deviations from the mean and therefore including about 95% of those with teeth in the same stage as S.R.I.—is 17.27 to 23.09. *Id.* Using an unidentified methodology, the Report states that the probability of S.R.I. having attained 18 years of age is 93.45%. Ex. B. Notably, S.R.I.'s true age is within the age interval reported.

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[7] Dr. Senn appears to be ICE's go-to expert for these assessments. *See* Mimi Dwyer et al., *The U.S. Is Checking Immigrant Kids' Teeth to See If They Actually Belong in Adult Detention*, VICE (Oct. 11, 2018), https://www.vice.com/en/article/the-us-is-checking-immigrant-kids-teeth-to-see-if-they-actually-belong-in-adult-detention/. On at least two occasions, a federal court has held that ICE and ORR improperly relied on Dr. Senn's age assessments in determining that a child was an adult. *B.I.C. v. Asher*, 2016 WL 8672760, at *3, *6 (W.D. Wash. Feb. 19, 2016); *Y.A.A. v. Larose*, 2026 WL 1881585, at *2, *8 (S.D. Cal. June 30, 2026).

[8] The Demirjian method is an age assessment method based on categorizing the development stage of each tooth. *See* A. Demirjian, H. Goldstein & J. M. Tanner, *A New System of Dental Age Assessment*, 45(2) Human Biology 211, 214 (May 1973).

39. While waiting for Dr. Senn's report, ICE held S.R.I. in solitary confinement, in a room intended for medical quarantine.[9] *Id.* ¶¶ 20-21. They held him in a single room, separated from everyone else at the facility, including ICE officers, private contractors, and other immigrants. *Id.* ¶ 20. They gave him food through a slot at the bottom of the door. *Id.* The only people who he was able to interact with were medical professionals who entered every other day to draw his blood. *Id.* ICE did not inform the medical staff why S.R.I. was being held in that room and they asked S.R.I. multiple times why he was there given that he was not ill. *Id.*

40. After nine days in these conditions, an officer brought S.R.I. from this room to the general population. *Id.* ¶ 21. The officer told S.R.I. that he was an adult, a liar, and that he deserved where he was being taken. *Id.*

41. S.R.I. has continued to attempt to tell ICE that he is 17, but they respond that "the dentist said [you're] over 18." *Id.* ¶ 22.

42. S.R.I.'s sister has written an affidavit verifying that S.R.I. was born in 2009. Ex. E. She also obtained a letter from the local hospital detailing S.R.I.'s last two hospital visits, date of birth, and sex, Ex. F, and a report card from his school that lists his age (13) and the year (2022), Ex. G. Petitioner presented this additional evidence to the Assistant United States Attorney in advance of filing to see if litigation could be avoided.

43. DHS is pursuing expedited removal proceedings against S.R.I., meaning that he has not been issued a Notice to Appear or scheduled for a hearing with an immigration judge. *Id.* ¶ 31. In expedited removal proceedings, an applicant is not permitted to fully present their case to an immigration judge, but instead receives

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[9] Reporting from the LA Times indicates that the practice of holding children whose ages are in dispute in solitary confinement is not new at Otay Mesa Detention Center. *See* Brittny Mejia & Kate Morrissey, *U.S. Is Using Unreliable Dental Exams to Hold Teen Migrants in Adult Detention*, LA Times (June 2, 2019), https://www.latimes.com/local/lanow/la-me-ln-immigrant-age-migrants-ice-dental-teeth-bangladesh-20190602-story.html (noting that one individual was placed in administrative segregation while his age was in question).

a credible fear interview from a United States Citizenship and Immigration Services (USCIS) officer assessing whether he has a credible fear of persecution or torture if deported. 8 C.F.R. §§ 235.3(b)(2)(ii), (b)(4); *see generally* 8 C.F.R. § 208.30. S.R.I. expressed a fear of return to Ethiopia, explicitly requested a "fear" interview many times, and finally received his credible fear interview on July 21 and July 31. *Id.* ¶¶ 31-32. On August 4, he received a phone call suggesting he received a negative result, *id.* ¶ 33, and on August 6 he was informed that review by an immigration judge would take place on Monday, August 10, 2026.

44. Unsurprisingly, S.R.I. has struggled with the harsh conditions of his detention. He has a history of panic attacks, and detention at Otay Mesa has triggered of number of panic attacks in which he fears he will die. *Id.* ¶ 24. He is isolated in a sea of adults, and there are no other Somali speakers in his bunk, no others with whom he can comfortably communicate. *Id.* ¶ 25. Multiple staff have denied his many requests to move to a bunk with other Somali speakers. *Id.*

45. He cannot sleep at night because others detained near him are loud, the guards walking around jangling their keys [redacted] experienced in Ethiopia, and the facility is kept uncomfortably cold. *Id.* ¶ 27.

46. The food gives him pain, nausea, and acid reflux and his skin becomes blotchy and irritated after he takes a shower. *Id.* ¶ 26. The facility has not consistently provided medical treatment and S.R.I.'s ailments continue unabated. *Id.*

47. The conditions of confinement have impacted S.R.I. so much that he started noticing gaps in his memory, for example names of things he encountered on his trip to the United States. *Id.* ¶ 28. This concerned him enough to request "to meet with a memory doctor." *Id.*

48. Aden, a friend of S.R.I.'s father living in Minnesota, is ready to sponsor S.R.I. in the United States. *Id.* ¶ 34. He used to check in on S.R.I. in Ethiopia by phone after S.R.I.'s father died. *Id.* Now, there is a room in his home waiting for S.R.I

and he is fully prepared to provide for and support S.R.I. so that S.R.I. can finally start attending school again. *Id.*

49. S.R.I. has been in DHS custody since early May, over two and a half months. With the exception of the nine days he was held in solitary confinement, he has been at adult facilities, fully integrated with the adult population, for the entirety of this time. *See generally id.*

EXHAUSTION

50. The habeas statute "does not specifically require petitioners to exhaust direct appeals before filing petitions for habeas corpus." *Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004) (citation omitted).

51. Exhaustion is also not required as a prudential matter. Prudential exhaustion may be appropriate if "(1) agency expertise makes agency consideration necessary to . . . reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). None of these factors weigh in favor of requiring exhaustion here.

52. In this situation, there is no "administrative scheme" to bypass. There is no process for appealing an age determination.

53. Further, S.R.I. is unlawfully in expedited removal proceedings. He is therefore ineligible for bond before an immigration judge under 8 U.S.C. 1225(b)(1)(B)(IV), which mandates detention.

JURISDICTION UNDER 8 U.S.C. § 1252(e)

54. 8 U.S.C. § 1252(e)(2) restricts judicial review of determinations of expedited removal, made under 8 U.S.C. § 1225(b)(1), in habeas proceedings. The provision does not apply here because S.R.I. is not challenging his expedited removal proceedings; S.R.I. is challenging his age determination and custody status.

55. Where federal courts are presented with a challenge to custody and not a challenge to the discretionary decision to place an individual in expedited removal or an expedited removal order, they maintain jurisdiction. *See Noori v. LaRose*, 807 F. Supp. 3d 1146, 1162 (S.D. Cal. 2025) (holding the § 1252(e) did not bar review where petitioner challenged the revocation of his parole, the dismissal of his full removal proceedings, and his detention—all of which resulted in petitioner being placed in expedited removal proceedings); *Cong v. Noem*, 2026 WL 76566, at *2 (S.D. Cal. Jan. 9, 2026).

56. Further, S.R.I. has not yet received an administratively final result from the credible fear process; he does not have an expedited removal order to challenge anyway. *See L.S. v. Warden, Otay Mesa Det. Ctr.*, 2026 WL 143150, at *3 (S.D. Cal. Jan. 20, 2026) ("The Court finds § 1252(e)(2) does not bar its jurisdiction over Petitioner's claims. Petitioner is not challenging an expedited order of removal because she has not received a final expedited removal order, nor is she challenging the discretionary decision to place her in expedited removal."); *M.F. v. Warden of Otay Mesa Det. Ctr.*, 2026 WL 172509, at *2 (S.D. Cal. Jan. 22, 2026).

LEGAL FRAMEWORK

I. Legal Framework Governing Care of Unaccompanied Children

a. Custody of Unaccompanied Children

57. Congress, United States courts, and multiple federal agencies have mandated that special care must be provided to unaccompanied immigrant children. Unaccompanied immigrant children, referred to in this petition as unaccompanied children, are statutorily defined as individuals under the age of 18, without any

status in the United States, who have no parent or legal guardian available to provide care in the United States. 6 U.S.C. § 279(g)(2).

58. The central pillar of the legal system governing the care of unaccompanied children is the Trafficking Victims Protection Reauthorization Act (TVPRA), codified in relevant part at 8 U.S.C. § 1232.

59. The TVPRA orders that "the care and custody of all unaccompanied [noncitizen] children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services." 8 U.S.C. § 1232(b)(1). These duties fall to the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services (HHS). 6 U.S.C. § 279(a).

60. Every federal agency must notify ORR within 48 hours of the apprehension of an unaccompanied child or "*any claim or suspicion* that [a noncitizen] in the custody of such department or agency is under 18 years of age." 8 U.S.C. § 1232(b)(2)(A)-(B) (emphasis added). And such children must be transferred to ORR within 72 hours of determining their status as unaccompanied children. *Id.* § 1232(b)(4).

61. Unaccompanied children "shall be promptly placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). Congress clearly specified that a "child shall not be placed in a secure facility absent a determination that the child poses a danger to self or others or has been charged with having committed a criminal offense." *Id.*

62. The TVPRA sets in stone many of the provisions of the *Flores* Settlement Agreement, a 1997 settlement agreement governing the government's custody of undocumented immigrant children. *See* Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997), available at http://www.aila.org/File/Related/14111359b.pdf [hereinafter "Flores Settlement Agreement"]. Nonetheless, the Flores Settlement Agreement remains binding as to all minors in DHS custody. *See* Order re Defendants' Motion to Terminate,

ECF No. 1637, *Flores v. Blanche*, No. 2:85-cv-04544 (C.D. Cal. Aug. 15, 2025);[10] Flores Settlement Agreement ¶ 10.

63. Importantly, the Flores Settlement Agreement provides a federal cause of action to children who object to the type or manner of custody in which the federal government detains them. Flores Settlement Agreement ¶ 24A ("Any minor who disagrees with [the] determination to place that minor in a particular type of facility, or who asserts that the licensed program in which he or she has been placed does not comply . . . , may seek judicial review in any United States District Court with jurisdiction and venue[.]").

64. The Agreement directs that the government shall hold minors in facilities "that are consistent with . . . concern for the particular vulnerability of minors." *Id.* ¶ 12. It orders that the government must release the child if "detention of the minor is not required either to secure his or her timely appearance before [DHS] or the immigration court, or to ensure the minor's safety or that of others[.]" *Id.* ¶ 14.

65. For minors in custody, it requires that the government must "segregate unaccompanied minors from unrelated adults," and that "an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours." *Id.*

66. ICE's own manual for the treatment of juveniles states the same: an unaccompanied child "can **NEVER** be placed into any adult detention facility." ICE, Juvenile and Family Residential Management Unit Field Office Juvenile Coordinator Handbook § 3.1.8.5 (Nov. 2021),

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[10] The district court's decision upholding the continued validity of the settlement agreement is on review at the Ninth Circuit, but the panel's skepticism of the government's arguments at oral argument indicates that the district court's decision will be upheld. *Flores v. Blanche*, No. 25-6308 (oral argument held on June 2, 2026); *see* Isaiah Poritz, *Trump Bid to Undo Child Detention Pact Gets Brisk Court Response*, Bloomberg Law (June 2, 2026), https://news.bloomberglaw.com/litigation/trump-bid-to-undo-child-detention-pact-gets-brisk-court-response.

https://www.ice.gov/doclib/foia/policy/handbooikFOJC_Nov2021.pdf [hereinafter "ICE Juvenile Coordinator Handbook"] (emphasis in original).

67. Under the same ICE Juvenile Coordinator Handbook, other conditions of custody must account for the child's age: "As a rule, [ICE does] not handcuff minors during transport . . . . Any minor deemed not to pose a threat of harm or escape by an . . . officer will not be restrained." ICE Juvenile Coordinator Handbook § 3.1.20. Any use of restraints on a minor must be approved by a supervisor. *Id.*

b. Adjudication of Immigration Applications from Unaccompanied Children

68. In addition to the special laws governing custody, the law provides a number of other benefits to unaccompanied children in recognition of their special vulnerabilities. As ICE's policy manual states, "Every effort must be taken to ensure the safety and well-being of the [unaccompanied children]." ICE Juvenile Coordinator Handbook § 3.1.8.3.

69. The TVPRA prohibits DHS from placing unaccompanied children (except those from contiguous countries) in expedited removal proceedings or issuing expedited removal orders for them. 8 U.S.C. § 1232(a)(5)(D)(i). Instead, the child must have an opportunity to fully present their case to an immigration judge pursuant to 8 U.S.C. § 1229a (section 240 of the Immigration and Nationality Act (INA)). *Id.*

70. In addition, the TVPRA also gives USCIS initial jurisdiction over asylum applications filed by unaccompanied children, instead of requiring them to argue their case in the far more intense and adversarial environment of immigration court. 8 U.S.C. § 1158(b)(3)(C). In addition, applications filed by unaccompanied children "shall be governed by regulations which take into account the specialized needs of unaccompanied . . . children and which address both procedural and

substantive aspects of handling unaccompanied . . . children's cases." 8 U.S.C. § 1232(d)(8).

c. Age Determination Framework

71. In the TVPRA, Congress ordered HHS, in consultation with DHS, to develop age determination procedures where there is disagreement as to the individual's age – with one specific requirement: "At a minimum, these procedures *shall* take into account multiple forms of evidence, including *the non-exclusive* use of radiographs[.]" 8 U.S.C. § 1232(b)(4) (emphasis added). Federal courts have consistently held that DHS and HHS violate the TVPRA when they rely exclusively on medical age assessments. *See infra* section I.E.

72. ORR, the subagency tasked with caring for unaccompanied children, implemented an age determination policy under this statute known as the Unaccompanied [Noncitizen] Children Bureau Policy Guide. ORR Unaccompanied Alien Children Bureau Policy Guide § 1.6, Determining the Age of an Individual Without Lawful Immigration Status (Aug. 1, 2024), https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.6 [hereinafter "ORR Policy Guide"].

73. ICE conducts age determinations consistently with ORR's policies. *See* ICE Directive Technical and Procedural Update, Age Determination Procedures for Custody Determination, Policy No. ERO 11301.4 (Dec. 11, 2015).[11] ICE has also issued multiple relevant policies, including the Enforcement and Removal Operations Juvenile Coordinator Handbook. ICE Juvenile Coordinator Handbook § 3.1.2.

74. As ordered by the TVPRA, both ICE's and ORR's procedures require that age determination be based on "the totality of all available evidence, including the

[11] Available as the filing in another court case, at https://kennedyhumanrights.org/wp-content/uploads/2025/05/Age-determination-FOIA-complaint.pdf (Document 1-3).

statement of the individual in question." ICE Juvenile Coordinator Handbook § 3.1.2; ORR Policy Guide §1.6. Many forms of evidence may be considered, including *inter alia*: official government documents, such as birth certificates; other documents recording the child's date of birth, such as school or medical records; statements from the child and others as to their age; and a medical age assessment. ICE Juvenile Coordinator Handbook § 3.1.2; ORR Policy Guide §1.6.2.

75. Under these policies, the use of a medical age assessment is limited. As the ORR Policy Guide acknowledges, "no current medical assessment method can determine an exact age" and "[a]mbiguous, debatable, or borderline forensic examination results are resolved in favor of finding the individual is a child." ORR Policy Guide §1.6.2.3. When used, medical age assessments may not be the "sole determining factor" of age but rather must be "considered in conjunction with the totality of the evidence." *Id.* Further, any age assessment exam must "tak[e] into account the individual's ethnic and genetic background." *Id.*

76. Concerns regarding whether DHS follows its age determination procedures are not new. In 2020, the DHS Office for Civil Rights and Civil Liberties released a report regarding 100 allegations it received in five years that CBP "violated the civil rights and civil liberties of unaccompanied . . . children when determining their ages or verifying the authenticity of their birth certificates."[12] Many of these complaints exposed coercion of the kind S.R.I. experienced: officers intimidating a child by forcefully accusing the child of lying and threatening that the child

[12] Memorandum from Cameron P. Quinn, Officer, Office for Civil Rights and Civil Liberties, to Mark A. Morgan, Acting Commissioner, U.S. Customs and Border Patrol et al. (May 11, 2020). The report was previously available at https://www.dhs.gov/sites/default/files/publications/retention-memo-cbp-age-determinationbirthcertificateverification-05-11-20.pdf, but can now be found only as an exhibit in another lawsuit. *See* https://kennedyhumanrights.org/wp-content/uploads/2025/05/Age-determination-FOIA-complaint.pdf (Document 1-1).

would be sent to prison or charged with a crime if they did not agree that they were over 18.[13]

77. Federal courts have consistently held that DHS and ORR violate the TVPRA and agency policy when they rely almost exclusively on medical age assessments to determine an individual is an adult. *Y.A.A. v. Larose*, 2026 WL 1881585, at *8 (S.D. Cal. June 30, 2026); *N.B. v. Barr*, 2019 WL 4849175, at *12 (S.D. Cal. Oct. 1, 2019); *B.I.C. v. Asher*, 2016 WL 8672760, at *6 (W.D. Wash. Feb. 19, 2016); *L.B. v. Keeton*, 2018 WL 11447076, at *6 (D. Ariz. Oct. 26, 2018); *cf. C.T.M. v. Moore*, 2020 WL 5919737, at *3 (N.D. Tex. July 1, 2020), *report and recommendation adopted*, 2020 WL 4333365 (N.D. Tex. July 28, 2020) (finding that the agency did not rely solely on the medical age assessment, but considered multiple other pieces of contradictory evidence). Courts have also held that failing to consider all available evidence and failing to account for the petitioner's ethnic background in a medical age assessment violate agency policies. *A.D. v. Mullin*, 2026 WL 1983137, at *4 (W.D. Pa. July 9, 2026) (failing to consider affidavits from family members); *R.R. v. Orozco*, 2020 WL 3542333, at *9 (D.N.M. June 30, 2020) (relying on a medical age assessment that omitted required information, including consideration of petitioner's ethnic and genetic background).

78. In fact, a court in this district previously decided a similar case. Upon crossing into the United States, a Guinean teenager presented his birth certificate, government photo ID, and an additional document, all correctly showing his date of birth and demonstrating he was an unaccompanied minor. *N.B. v. Barr*, 2019 WL 4849175, at *4 (S.D. Cal. Oct. 1, 2019). Traveling through Central America on his way to the United States, he had used an older birth date, but he informed

[13] *Id.* at 3-6.

U.S. officials about this honestly. *Id.* at *3. A dental age assessment was conducted and it found his estimated age to be 20.24 years. *Id.*

79. In granting the habeas petition, the court explained:

> Viewing all evidence in its totality, [petitioner] had in his possession two forms of identification showing that his date of birth was in [redacted], making him a minor. [Petitioner] forthrightly informed Respondents that he had lied about his age during his travels to avoid being deported or detained prior to reaching the United States border. Nonetheless, Respondents discredited this evidence based on speculation and generalizations, permitting them to obtain a dental radiograph that is not inconsistent with [petitioner's] claim that he is nearly eighteen years old. Not only has [petitioner] established a high likelihood that Respondents relied exclusively on the dental radiograph in determining his age in violation of the TVPRA, but—based on the totality of the evidence before Respondents—it also appears likely that the radiograph itself was impermissible.

Id. at 12. As remedy, the Court enjoined respondents from detaining the petitioner with adults and ordered respondents to treat petitioner as a minor for purposes of his immigration detention and proceedings. *Id.* at *13.

80. In another case in the Southern District of California, the court held that the government violated the TVPRA and agency guidance by relying "almost exclusively" on a dental age assessment and contrary statements from petitioner regarding his age, that had been elicited by CBP officers who threatened to return petitioner to Ethiopia if he was a minor. *Y.A.A. v. Larose,* 2026 WL 1881585, at *7-8 (S.D. Cal. June 30, 2026).

81. It is of note that misrepresentations made by an asylum seeker for the purpose of fleeing their home country and seeking safety in the United States are not a basis for rejecting an individual's credibility. *Akinmade v. I.N.S.*, 196 F.3d 951, 955 (9th Cir. 1999); *In re O-D-*, 21 I. & N. Dec. 1079, 1083 (BIA 1998) ("[T]here may be reasons, fully consistent with the claim of asylum, that will cause a person to possess false documents, such as the creation of a false document to escape

persecution by facilitating travel"). This is especially true where the asylum seeker candidly reveals these misrepresentations upon entry to the United States.

d. Dental Age Assessments

82. "Dental age estimation involves assigning scores for tooth maturation stages and correlating those scores with chronological age[.]" Ex. J ¶ 7 (Report from Forensic Anthropologist Elizabeth DiGangi). The particular method used in the Dental Age Assessment completed by Dr. Senn for S.R.I. is known as the Demirjian method, "which involves giving scores based on stage attained to seven permanent (adult) teeth, including the third molar." *Id.* ¶ 13; Ex. B. The third molar (the wisdom teeth) is the final tooth to develop and therefore is the focus of age assessments for older teenagers. *Id.* ¶ 12.

83. DHS and ORR have acknowledged repeatedly that the use of radiographs to assess age is imprecise *at best*, for example by referring to it "as a last resort,"[14] and stating explicitly that "no current medical assessment method can determine an exact age," ORR Policy Guide §1.6.2.3.

84. A report from DHS's Office of the Inspector General observed that:

> Using radiographs of a person's bones or teeth . . . cannot produce a specific age due to a range of factors affecting an individual's growth. These include normal biological variation, as well as cultural and ethnic differences. The timing of puberty, diet, genetics, health, and geography can also affect tooth and bone development. We spoke with a pediatric physician who said that abuse and torture can affect bone growth as well.[15]

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[14] ICE Health Service Corps, Age Assessment Facilitation, IHSC Directive 01-54, at 6-1 (Sept. 26, 2023), https://www.ice.gov/doclib/foia/policy/directive11771.1.pdf.

[15] Dep't of Homeland Sec. Office of the Inspector Gen., Age Determination Practices for Unaccompanied Alien Children in ICE Custody 6 (Nov. 2009), https://tracreports.org/tracker/dynadata/2010_01/OIG_10-12_Nov09.pdf.

85. The American Board of Forensic Odontology[16] explained: "The precise rates at which the processes of developmental, maturational, and post-developmental dental changes occur are unique to each individual. . . . The individual being evaluated may or may not progress through these changes at a rate comparable to the subjects in the reference study."[17] In an interview, Dr. Senn himself emphasized that the data in an age assessment report "supports a range – not a precise age," and that "[m]istakes are going to be made when you deal with estimates."[18] As forensic odontologists Anthony Cardoza and Amber Riley observed, "Dental age estimation is not an exact science[.]" Ex. K (Report by Forensic Odontologists Anthony R. Cardoza and Amber D. Riley).

86. The danger of using a dental age assessment is not just that it provides a wide range, but that *it is misleading*.[19] Forensic anthropologist Dr. Elizabeth DiGangi explained "the most that could be concluded from an age estimation based on dental examination, consistent with the available data, is that [S.R.I.] has reached the minimum age for the observed stage of development (i.e., at least 13 years old[).]" Ex. J ¶ 21. Following a review of the literature, Statistics Professor Richard Gevirtz similarly concluded "[t]here is not adequate evidence to allow

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[16] Odontology is the "science dealing with the teeth, their structure and development, and their diseases." *Odontology*, Merriam-Webseter Dictionary, https://www.merriam-webster.com/dictionary/odontology (last visited July 24, 2026).

[17] American Board of Forensic Odontology, Standards and Guidelines for Dental Age Assessment, ADA Technical Report No. 1077-2020 § 4.2 (Feb. 2021), https://abfo.org/wp-content/uploads/2021/02/ADA-Technical-Report-No.-1077_July_2020.-02-2021.pdf.

[18] Mimi Dwyer et al., *The U.S. Is Checking Immigrant Kids' Teeth to See If They Actually Belong in Adult Detention*, VICE (Oct. 11, 2018), https://www.vice.com/en/article/the-us-is-checking-immigrant-kids-teeth-to-see-if-they-actually-belong-in-adult-detention/.

[19] The Innocence Project described the presentation of a precise statistical probability of attainment of 18 years of age in S.R.I.'s age assessment report as "plainly misleading, unsupported, and invalid." Ex. I at 3 (Letter from the Innocence Project, Director of Strategic Litigation Chris Fabricant).

the Demirjian method [used in Dr. Senn's report of S.R.I.] to be used to establish age in the age groups of interest here." Ex. H ¶ 27 (Report from Statistics Professor Richard N. Gevirtz). The Innocence Project made the same finding. Ex. I. at 6 (Letter from the Innocence Project, Director of Strategic Litigation Chris Fabricant).

87. Recent peer-reviewed studies have concluded that the Demirjian method used by Dr. Senn does not provide a reliable indication of attainment of 18 years of age.[20] "The identified literature does not provide scientific evidence for a stable relationship between Demirjian's stage H of a mandibular third molar and chronologic age in order to assess if an individual is under or above the age of 18 years."[21] The Demirjian method has been criticized in particular for "its tendency to overestimate age in many populations outside of its original French-Canadian reference group."[22]

88. One study found that the Demirjian method correctly predicted the age of 17-year-olds within a one-year margin *less* than 42% of the time.[23] Even when the margin of error was widened to two years, the Demirjian method *in*correctly estimated the age of 17-year-olds one third of the time.[24] These errors were overestimations;

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[20] G. Klingberg et al., *How Old Are You? A Systematic Review Investigating the Relationship Between Age and Mandibular Third Molar Maturity*, 18(5) PLoS ONE 1, 2 (2023), https://doi.org/10.1371/journal.pone.0285252; Claire Willmann et al., *Accuracy of Age Estimation Using Three Dental Age Estimation Methods in a Young, Large, and Multiethnic Patient Sample*, 11 Dentistry J., 208, 1 (2023), https://doi.org/10.3390/dj11120288 ("The evaluated methods are unable to provide reliable information to determine if an individual is a minor.").

[21] Klingberg et al., *supra* note 19.

[22] K.V. Viljila et al., *Age Estimation Using Dental Radiography: A Review*, 7(6) Int'l J. Multidisciplinary Res. 1, 3 (Nov.-Dec. 2025), https://www.ijfmr.com/papers/2025/6/62278.pdf.

[23] Willmann et al., *supra* note 19, at 7, tbl. 2.

[24] *Id.*

the Demirjian method found that a majority of study participants were older than their actual age.[25]

89. Statistics Professor Dr. Gevirtz incorporated the error rate found by this study into Dr. Senn's analysis of S.R.I. Ex. H ¶ 26. Figure 1 of Dr. Gevirtz's report shows that when properly accounting for the fact that the Demirjian method overestimates age, the results Dr. Senn found indicate that S.R.I. is likely to be *under* 18. *Id.*

90. These findings are not surprising. Older literature sheds considerable doubt on the accuracy of dental age assessments.[26] Because of the scientific unreliability, multiple "prominent global medical organizations have denounced the practice of chronologic age determination by any radiographic means including the European Academy of Pediatrics, British Royal College of Pediatrics and Child Health, British Royal College of Radiologists, French Academy of Medicine, French National Ethic Committee, and Dutch National Society of Physicians."[27]

91. In addition to broader problems with dental age exams and the Demirjian method, Dr. Senn's report of S.R.I. is undermined by a number of specific issues. Exs. H-J. For instance, the forensic odontology experts noted that only one method of age estimation was used. Ex. K at 2. But the most significant problem is that the dataset with which Dr. Senn compares S.R.I. is not made up of Somalis or

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[25] *Id.* at 6, fig 2.

[26] Jane Blakenship et al., *Third Molar Development in the Estimation of Chronologic Age in American Blacks as Compared With Whites*, 52(2) J. Forensic Sciences 428, 432 (2007), https://pubmed.ncbi.nlm.nih.gov/17316245/ ("[T]hird molar development should be used with caution for forensic purposes . . . an individual's age cannot be assessed with any precision."); B. Knell et al., *Dental Age Diagnostics by Means of Radiographical Evaluation of the Growth Stages of Lower Wisdom Teeth*, 123(6) Int. J. Legal Med. 465, 465, 468 (Nov. 2009), https://pubmed.ncbi.nlm.nih.gov/19241087/ ("The wisdom tooth as sole criterion cannot be considered reliable for attained age of 18 years[.]").

[27] Nadia Laniado et al., *The Use of Dental Radiographs for Age Estimation of Unaccompanied Migrant Minors*, 82 J. Pub. Health Dent. 349, 350 (2022), https://pubmed.ncbi.nlm.nih.gov/35170749/.

Ethiopians, but rather a specific group of Black Americans. Ex. B. Analyses of different ethnic groups show that the third molar develops at substantially different rates in individuals of different ethnicities.[28] Regarding the analysis completed in this case, forensic anthropologist Dr. DiGangi explained "even assuming some probability might be *estimated* based on this literature [used by Dr. Senn], it would, by its own terms, be valid only as it relates to *African-Americans*. There is no basis for assuming the African-American population is representative of someone from Ethiopia." Ex. J. ¶ 6 (emphasis in original).

CLAIMS FOR RELIEF

COUNT ONE

TVPRA Custody Provisions

Violation of 8 U.S.C. § 1232, Section 235 of the Trafficking Victims Protection Reauthorization Act

92. Petitioner re-alleges and incorporates by reference the paragraphs above.

93. Respondent's custody and treatment of S.R.I. violates multiple provisions of the TVPRA.

94. At 8 U.S.C. § 1232(b)(1), the TVPRA requires that HHS provide care and custody of unaccompanied children. Because he is a minor without a parent or legal guardian, S.R.I. is an unaccompanied child. S.R.I. is in ICE custody, not in HHS custody.

95. At 8 U.S.C. § 1232(c)(2)(A) the TVPRA requires that a "child shall not be placed in a secure facility absent a determination that the child poses a danger to self or others or has been charged with having committed a criminal offense" and that an unaccompanied child shall be "placed in the least restrictive setting that is in the best interest of the child."

96. Respondents have made no determination that S.R.I. is a danger. Nor has S.R.I. ever been criminally charged. Nonetheless Respondents are detaining S.R.I. in a

[28] *See* Klingberg et al., *supra* note 19.

secure facility that is indisputably not the least restrictive setting that is in his best interests.

97. At 8 U.S.C. § 1232(b)(2), the TVPRA requires that every federal agency notify ORR within 48 hours upon apprehension of an unaccompanied child or "any claim or suspicion that [a noncitizen] in the custody of such department or agency is under 18 years of age."

98. It is undisputed that S.R.I. informed Respondents of his age in his first extended conversation with officers after crossing the border. Even if S.R.I.'s age was reasonably in dispute at that time, S.R.I.'s statements that he was 17 raise a "claim or suspicion" that he was a minor. Upon information and belief, DHS did not notify ORR.

COUNT TWO

TVPRA Age Assessment Provision

Violation of 8 U.S.C. § 1232(b)(4), Section 235(b)(4) of the Trafficking Victims Protection Reauthorization Act

99. Petitioner re-alleges and incorporates by reference the paragraphs above.

100. At 8 U.S.C. § 1232(b)(4), the TVPRA requires that age determination procedures must take into account multiple forms of evidence and may not rely exclusively on radiographs.

101. Respondents relied entirely on a dental age exam (which incorrectly listed S.R.I.'s name and reported date of birth) and failed to consider S.R.I.'s consistent statements, birth certificate, and Ethiopian ID card, all of which support his 2009 birth date. ICE officers have explicitly told S.R.I. that they do not believe him because the dentist found he was over 18.

102. This violation is especially egregious because it is so well-established by the scientific literature that dental age exams are imprecise, provide only a broad age range, and are methodologically unreliable, especially when an improper reference group is used, as here. *See supra* section I.C. This information is not

news to the agency; their policies acknowledge some of these weaknesses. *See, e.g.*, ORR Policy Guide §1.6.2.3. Moreover, S.R.I. is actually within the age interval indicated in the Dental Age Assessment. Ex. B.

COUNT THREE

Flores Settlement Agreement

Violation of Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997)

103. Petitioner re-alleges and incorporates by reference the paragraphs above.

104. As an unaccompanied child, S.R.I. is a *Flores* class member and is authorized to challenge Respondents' custodial decisions in this Court. Flores Settlement Agreement ¶ 24B.[29]

105. Like the TVPRA, the Flores Settlement Agreement requires that Respondents "place each detained minor in the least restrictive setting appropriate to the minor's age and special needs," *id.* ¶ 11, and prohibits Respondents from detaining a child where not necessary for safety reasons or to secure their appearance in court, *id.* ¶ 14. The Agreement also prohibits holding minors with unrelated adults for more than 24 hours. *Id.* ¶ 12.

106. Respondents have violated these provisions by holding and continuing to hold S.R.I. at Otay Mesa Detention Center, an adult facility.

COUNT FOUR

Accardi Violation

Arbitrary and Capricious Under the Administrative Procedure Act, 5 U.S.C. § 706(2)

107. Petitioner re-alleges and incorporates by reference the paragraphs above.

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[29] Counsel has conferred with the Assistant United States Attorney prior to filing this petition as required by the Settlement Agreement. Flores Settlement Agreement ¶ 24E.

108. The Administrative Procedure Act provides a vehicle for judicial review of "final agency action for which there is no other adequate remedy in a court[.]" 5 U.S.C. § 704. Final agency action exists here because Respondents have made a conclusive decision that S.R.I. is an adult, as demonstrated by their continued unlawful action of detaining him in a secure, adult facility, and there is no administrative mechanism with which he can appeal the decision.

109. In reviewing an APA claim, a court "shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be— arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "unsupported by substantial evidence." 5 U.S.C. § 706(2)(A), (E). It shall also compel agency action that has been "unlawfully withheld or unreasonably delayed." *Id.* § 706(1).

110. Under the *Accardi* doctrine, an agency's failure to comply with its own rules and regulations is arbitrary and capricious. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266-68 (1954) (holding that the Board of Immigration Appeals must follow its own regulations); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) (observing that *Accardi* claims may arise under the APA and collecting cases). "The legal proposition that agencies may be required to abide by certain internal policies is well-established." *Alcaraz v. I.N.S.*, 384 F.3d 1150, 1162 (9th Cir. 2004); *see also Nat'l Ass'n of Home Builders v. Norton*, 340 F.3d 835, 852 (9th Cir. 2003) ("Having chosen to promulgate [a policy], the [agency] must follow that policy."). This is especially true regarding the age determination policies here, because the policies impact the substantial rights of children. *See Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures[.]").

111. Agency policy requires that age determinations take into account "the totality of all available evidence" and that medical age assessments may not be the "sole

determining factor" of age. *See* ICE Juvenile Coordinator Handbook § 3.1.2; ORR Policy Guide § 1.6.2.3.

112. ICE and ORR have violated their own policies by failing to consider the totality of the evidence establishing S.R.I. is a minor and consequently placing him in adult ICE detention. When S.R.I. has continued to ask ICE why they do not believe he is 17 years old, ICE has informed him that the dentist found he is an adult, indicating that Respondents relied entirely on a scientifically unreliable dental exam and failed to consider S.R.I.'s consistent statements, birth certificate, and Ethiopian ID card. That agency policies recognize the imprecision of dental age exams makes this an especially unreasonable decision.

113. The Dental Age Assessment itself also violates the requirement that the exam take into account "the individual's ethnic and genetic background." ORR Policy Guide §1.6.2.3. Dr. Senn assessed S.R.I's age in comparison with a group of Black American, not Somalis or Ethiopians, or even some other population in Eastern Africa. S.R.I. is ethnically distinct from two groups of Black American living in Tennessee and Arkansas; the Dental Age Assessment therefore did not account for his particular ethnic background.

114. As a result of these violations, ICE wrongly determined that S.R.I is an adult. This has caused further violations.

115. Respondents further failed to comply with ICE Juvenile Coordinator Handbook § 3.1.8.5, which emphatically prohibits detaining a minor in an adult detention facility.

116. Respondents also violated the rule that ICE may not shackle minors during transport where they do not pose a threat of harm or escape. ICE Juvenile Coordinator Handbook § 3.1.8.5. The use of restraints on a minor must be approved by a supervisor. *Id.* When Respondents transported S.R.I. to Otay Mesa Detention Center, Respondents cuffed S.R.I.'s hands and feet in one set of connected shackles. Ex. A ¶ 17. To make matters even worse, the ankle cuffs were

painful because they rested on an injury on S.R.I's ankle. *Id.* The officers did not alter S.R.I.'s restraints when he explained he was in pain. *Id.*

COUNT FIVE

Arbitrary, Capricious, an Abuse of Discretion, and Not Supported by Substantial Evidence

Administrative Procedure Act, 5 U.S.C. § 706(1)

117. Petitioner re-alleges and incorporates by reference the paragraphs above.

118. Under the APA, a reviewing court "shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be— arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "unsupported by substantial evidence." 5 U.S.C. § 706(2)(A).

119. Action is arbitrary and capricious where an agency fails to "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Manufacturers Ass'n of the United States v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983) (internal quotation marks and citation omitted). Federal review of agency action is "searching and careful," *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 556 (9th Cir. 2000), and determines whether the decision is supported by substantial evidence, *Herrera v. U.S. Citizenship & Immigr. Servs.*, 571 F.3d 881, 885 (9th Cir. 2009).

120. In determining that S.R.I. was an adult, Respondents did not consider the relevant data and did not articulate a satisfactory explanation for this decision. In fact, Respondents provided S.R.I. with *no* explanation regarding how they concluded he was an adult, except by stating that the dentist said he was over 18 and providing a copy of the Dental Age Assessment. Ex. A ¶ 22. This alone is arbitrary and capricious.

121. Further, Respondents did not consider relevant data because they discounted S.R.I.'s statements, his birth certificate, and his Ethiopian ID, all without basis.

Officers told S.R.I. that his documents were fraudulent, but did not provide a reason why. The documents are not fraudulent.

122. Respondents instead relied only on the Dental Age Assessment in determining S.R.I.'s age. The facial imprecision of the assessment, i.e. presenting a six-year range which *included* S.R.I.'s actual age, the proven unreliability of the method used, and the lack of an appropriate reference group with which to compare S.R.I., make this reliance arbitrary and capricious.

123. Moreover, substantial evidence does not support a finding that S.R.I. is an adult because (1) S.R.I. presented two forms of valid government identification upon entry; (2) S.R.I. consistently stated his birth date as 2009, even under threatening interrogation conducted in the middle of the night in English; (3) S.R.I. freely, honestly, and consistently explained that he had traveled with a passport with an altered age that his father's friend obtained for him so that he could exit Ethiopia; (4) S.R.I.'s sister wrote an affidavit verifying S.R.I.'s age; (5) S.R.I. was later able to obtain and present the agency with hospital and school records from Ethiopia; (6) his stated age was within the range found by the dental age exam; and (7) dental age exams are imprecise and unreliable.

COUNT SIX

Action Unlawfully Withheld

Administrative Procedure Act, 5 U.S.C. § 706(1)

124. Petitioner re-alleges and incorporates by reference the paragraphs above.

125. Where agency action has been "unlawfully withheld or unreasonably delayed," the APA authorizes the Court to compel agency action. 5 U.S.C. § 706(1)

126. Respondents unlawfully withheld agency action both by failing to notify ORR of the apprehension of an unaccompanied child (or someone claiming to be a child) and by failing to transfer S.R.I. to ORR custody—violating 8 U.S.C. §§ 1232(b)(1)-(2). In addition, Respondents unlawfully withheld agency action by

failing to promptly place S.R.I. in the least restrictive setting in his best interest—violating 8 U.S.C. § 1232(c)(2)(A).

127. The Court should therefore compel the agency to promptly place S.R.I. in the least restrictive setting in his best interest, by releasing him to his sponsor or by releasing him to ORR with orders that S.R.I. be promptly released to his sponsor.

COUNT SEVEN

Substantive Due Process

Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution

128. Petitioner realleges and incorporates by reference each and every allegation contained above.

129. The Due Process Clause of the Fifth Amendment prohibits the government from depriving any person, including noncitizens, of liberty without due process of law. U.S. Const. amend. V; *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

130. Due process prohibits civil detention that is "punitive rather than regulatory" in purpose or in effect. *United States v. Torres,* 995 F.3d 695, 708 (9th Cir. 2021). Thus, detention beyond what is reasonably related to the purpose of commitment amounts to punishment. *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004); *United States v. Salerno,* 481 U.S. 739, 744 n.4 (1987).

131. There are only two valid purposes of civil immigration detention: to mitigate the risk of flight and to protect the community from danger. *Zadvydas*, 533 U.S. at 690. Therefore, when the nature of detention is unreasonable or excessive relative to the government's interests in mitigating flight risk and danger to the community, such detention violates the Due Process Clause. *Id.*

132. To analyze substantive due process challenges to civil immigration detention, courts focus on the length and conditions of detention (i.e. the burden on the individual's liberty), indicators of the individual's dangerousness, and the government's interest in enforcing immigration law (i.e. indicators of flight risk).

See, e.g., *Sadeqi v. LaRose*, 809 F. Supp. 3d 1090, 1094 (S.D. Cal. 2025) (discussing the factors often considered in this district in a prolonged detention due process challenge); *cf. United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021) (considering length of pretrial detention, the prosecution's contribution to the delay, and factors under the Bail Reform Act related to dangerousness).

133. Ten weeks in adult detention weigh heavily on S.R.I. For all intents and purposes, he is imprisoned.

> Petitioner is detained at Otay Mesa Detention Center [OMDC] where he is locked up behind razor wire and concrete walls in a secured facility, forced to wear a color-coded prisoner jump suit, forbidden from accessing the internet, restricted access to outdoor space, restricted on visitation, and guarded at all times with armed guards authorized to inflict punishment for violations of rules. Petitioner's confinement at OMDC is indistinguishable from penal confinement.

Abdul Kadir v. Larose, 2025 WL 2932654, at *5 (S.D. Cal. Oct 15, 2025) (internal quotation marks and citation omitted).

134. S.R.I. is isolated by age and language, with no other Somali speakers in his bunk. He has not been able to consistently access needed medication, for example, while he was vomiting. *Id.* ¶ 26. He cannot sleep because of nightmares, triggering behavior by the guards, and noise from his bunkmates, and his mental health is so bad he is worried about memory loss. *Id.* ¶¶ 27-28.

135. Respondents' institutional interests in mitigating danger and enforcing immigration law do not justify detaining a minor in a secure, adult facility, especially where there is no suggestion that S.R.I. is a danger or a flight risk. The legitimacy of the government's interests are further undermined by Respondents' violations of the controlling statutes, regulations, and agency policies and procedures governing the care and custody of unaccompanied children.

136. To the extent the government's prosecutorial interests are legitimate, they do not justify detention of the sort S.R.I. is experiencing.

137. The nature of S.R.I.'s detention at Otay Mesa Detention Center is excessive and unreasonable in relation to the government's interests in mitigating danger and flight. It is therefore punitive and in violation of the Due Process Clause.

COUNT EIGHT

Procedural Due Process

Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution

138. Petitioner realleges and incorporates by reference each and every allegation contained above.

139. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldrige,* 424 U.S. 319, 333 (1976) (internal quotation marks and citations omitted). "[D]ue process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation marks and citation omitted).

140. *Mathews v. Eldridge* asks the Court to consider: "(1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest[.]" *Id.* at 335 (cleaned up).

141. First, S.R.I. has a property interest in his statutory entitlements under the TVPRA as an unaccompanied child. "The property interests that due process protects extend beyond tangible property and include anything to which a plaintiff has a legitimate claim of entitlement." *Nozzi v. Hous. Auth. of City of Los Angeles*, 806 F.3d 1178, 1191 (9th Cir. 2015) (internal quotation marks and citations

omitted). Independent sources of federal or state law can create these entitlements. *Id.*

142. The relevant statutory entitlements include prompt placement in the least restrictive setting, 8 U.S.C. § 1232(c)(2)(a), protection from expedited removal, *id.* § 1232(a)(5)(D)(i), the right to have USCIS adjudication of an asylum application, *id.* § 1158(b)(3)(C), and the protections of regulations that account for "the specialized needs of unaccompanied children," *id.* § 1232(d)(8).

143. Second, the risk of erroneous deprivation of these entitlements is very high because Respondents violated the statutes and agency policies regarding age determination that were created to ensure that unaccompanied children are identified and protected. The process due is the one already enshrined in statute and policy: in assessing how old someone is, Respondents must consider all available evidence and not rely exclusively on radiographs, and any medical age assessment must account for ethnic and genetic background. 8 U.S.C. § 1232(b)(4); ICE Juvenile Coordinator Handbook § 3.1.2; ORR Policy Guide §§ 1.6, 1.6.2.3. Respondents should also provide Petitioner with a full explanation of their decision and its bases. The probative value of following the rules regarding age assessment is significant.

144. Third, the government has no legitimate interest in denying S.R.I. the statutory benefits he is entitled to as an unaccompanied minor. The government's interest in lawfully enforcing immigration law is not impeded by complying with the TVPRA or ensuring that treatment of unaccompanied children accounts for their special vulnerabilities.

145. Weighing these considerations, S.R.I.'s interest in these entitlements (placement in the least restrictive setting, full removal proceedings, and initial asylum jurisdiction with USCIS) is substantial. The government's interest in violating them is minimal.

146. Thus, Respondents have violated S.R.I.'s procedural due process rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243 or adopt Chief Judge Order No. 144, Standard Procedures for Immigration Habeas Petitions (Mar. 9, 2026);
3. Enjoin the Respondents from transferring Petitioner away from the jurisdiction of this District pending these proceedings;
4. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from Respondents' custody to the care of his sponsor;
    a. In the alternative, order Respondents to release Petitioner from Respondents' custody and facilitate his placement in the care of ORR within the Southern California of California within seventy-two hours, in compliance with 8 U.S.C 1232(b)(3), with instructions that ORR release Petitioner to his sponsor immediately and, in any case, no later than 5 days after his transfer to ORR custody, in compliance with 8 U.S.C. § 1232(c)(2)(B), which requires prompt release to the least restrictive setting;
5. Enter injunctive relief enjoining Respondents from further unlawfully detaining Petitioner in custody with unrelated adults;
6. Declare that Respondents' detention of Petitioner violates the TVPRA, the Flores Settlement Agreement, and the Fifth Amendment of the U.S. Constitution;
7. Set aside or vacate Respondents' age determinations as an unlawful violation of the TVPRA and as arbitrary, capricious, not in accordance with the law, and not supported by substantial evidence under the APA;
8. Award reasonable attorneys' fees under the Equal Access to Justice Act; and
9. Grant such further relief as this Court deems just and proper.

Dated: August 7, 2026

Respectfully submitted,

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