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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.: 26-cv-04547-LEK-MMP

TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. On August 19, 2026, three and a half months after Respondents arrested and detained Petitioner S.R.I. and following the initiation of federal litigation, Respondents produced for the first time a written determination of S.R.I.'s age, the Memorandum of Investigation (MOI).[1] ECF No. 6-1 at 71-73. It is too little too late. It does not meaningfully engage with or reasonably weigh the presented evidence. In their determination to find that S.R.I. is an adult, Respondents assume their conclusion instead of searching for the truth.
2. As a result, S.R.I.'s claims regarding his custody remain unchanged. S.R.I. is 17 years old, and his detention in an adult detention center continues to violate the Trafficking Victims Protection Reauthorization Act (TVPRA), the *Flores* Settlement Agreement, the Administrative Procedure Act (APA), and the Fifth Amendment of the U.S. Constitution. *See* ECF No. 1.

EXHAUSTION

3. There is no appeal process for age determination, and prudential exhaustion should be excused in any event. S.R.I. is not asking the Court to determine his age; rather the "question in this habeas proceeding is whether Respondents may rely upon the existing age determination as the statutory basis for Petitioner's present adult detention." *Y.A.A. v. LaRose*, 2026 WL 1881585, at *8 (S.D. Cal. June 30, 2026).
4. Moreover, since S.R.I. filed his petition, he *did* ask an immigration judge to reassess his age. S.R.I.'s immigration attorney moved to vacate his credible fear review on the basis that he was an unaccompanied child who cannot legally be in

[1] Because Respondents' Return raised substantial new factual allegations for the first time, S.R.I. files a somewhat lengthy Traverse to adequately respond. Nonetheless, S.R.I. is mindful of Local Civil Rule 7.1(h). To the extent leave of Court is required for the filing of a Traverse of this length, S.R.I. respectfully requests such leave and requests that the Court consider the Traverse in its entirety.

credible fear proceedings. *See* 8 U.S.C. § 1232(a)(5)(D)(i). The immigration judge stated:

> I cannot insert a finding that the respondent is a [unaccompanied child] if it's not already been raised by the Department and I don't believe the record is conclusive enough on this basis to find that the Respondent is a minor and to vacate the credible fear on that basis alone. Caselaw . . . . does not allow an IJ to replace a finding by the Department on that basis, so I am going to deny the motion to vacate.[2]

5. In addition, Respondents argue that S.R.I. is mandatorily detained pursuant to 8 U.S.C. § 1225(b), under which an immigration judge does not have jurisdiction to order release. Thus, to the extent, an administrative remedy exists, it is futile and inadequate. *See Perez Velasquez v. Bondi*, No. 26-CV-01759-GPC-DDL, 2026 WL 1042479, at *3 (S.D. Cal. Apr. 16, 2026).

CHENERY DOCTRINE

6. By conducting the MOI prior to an order from this Court, Respondents have conceded that their initial unwritten age assessment was illegal and unsupportable.
7. Updating the age determination *post hoc*, to better support arguments in litigation, violates the *Chenery* Doctrine, which teaches that agencies cannot provide additional *post hoc* rationalizations for their decision during litigation. *Sec. & Exch. Comm'n v. Chenery Corp.*, 318 U.S. 80, 95 (1943). "It is a foundational principle of administrative law that judicial review of agency action is limited to the grounds that the agency invoked *when it took the action*." *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 20 (2020) (emphasis added).
8. Because unaccompanied children (UC) cannot be placed into expedited removal proceedings, Respondents clearly determined that S.R.I. was an adult at the very latest prior to initiating the credible fear process on July 8, 2026. ECF 6-1 at 20-

[2] This quotation is from undersigned Counsel's notes at the credible fear review. Counsel does not have access to a recording of the hearing. There may therefore be some minor errors in the quotation.

23 (Signed Information About Credible Fear Interview). The agency cannot create new reasons to find that S.R.I. is an adult if they did not previously rely on those reasons. The MOI is almost entirely *post hoc* rationalization. Even if the Court considers the MOI, it cannot retroactively justify the age determination prior to July 8, 2026 and it does not cure the underlying TVPRA violations.

9. As a result, the Court should grant the petition on the ground that Respondents conceded that they illegally detained S.R.I. in adult detention center without having conducted a legally-compliant age determination. S.R.I. should be released to his sponsor or the Office of Refugee Resettlement (ORR) until a legally-compliant age determination is conducted.

10. As the Supreme Court explained:

> If those grounds [on which the agency relied] are inadequate, a court may remand for the agency to do one of two things: First, the agency can offer a fuller explanation of the agency's reasoning *at the time of the agency action*. This route has important limitations. When an agency's initial explanation indicates the determinative reason for the final action taken, the agency may elaborate later on that reason (or reasons) but may not provide new ones. Alternatively, the agency can deal with the problem afresh by taking *new* agency action. An agency taking this route is not limited to its prior reasons but must comply with the procedural requirements for new agency action.

11. *Dep't of Homeland Sec. v. Regents*, 591 U.S. at 20-21 (cleaned up) (emphasis in original). If the Court determines that it can consider the MOI, which Petitioner does not concede, the MOI nonetheless fails to justify S.R.I.'s detention with adults. The subsequent age determination does not "comply with the procedural requirements for new agency action." *Id.* at 21.

THE NEW AGE ASSESSMENT VIOLATES THE TVPRA, THE APA, AND THE U.S. CONSTITUTION

12. Respondents do not dispute that a proper age assessment must consider "the totality of all available evidence" under the TVPRA and pursuant to agency

policy. *See* 8 U.S.C. § 1232(b)(4) ("At a minimum, these procedures shall take into account multiple forms of evidence, including the non-exclusive use of radiographs, to determine the age of the unaccompanied alien."); 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"]; Juvenile and Family Residential Management Unit Field Office Juvenile Coordinator Handbook § 3.1.2 (Nov. 2021), https://www.ice.gov/doclib/foia/policy/handbooikFOJC_Nov2021.pdf [hereinafter "ICE Juvenile Coordinator Handbook"]. Nor do Respondents dispute that S.R.I. has a constitutional due process property interest in these guardrails. *See* ECF No. 1 at 34-35.

13. Respondents also do not dispute that agency action is arbitrary and capricious under the APA where an agency fails to "examine the relevant data and articulate a satisfactory explanation for its action[.]" *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).

14. The MOI fails to meaningfully consider all evidence and articulate a satisfactory explanation for its conclusions. It does not explain why the extensive documentary, testimonial, and expert evidence supporting S.R.I.'s minority should be rejected. DHS cannot simply list evidence and then announce a conclusion; its determination must actually explain why contrary evidence is being rejected. Petitioner addresses these errors one by one.

S.R.I.'s Alleged Statement in the I-213

15. The MOI and Respondent's Return treat S.R.I.'s alleged prior age statements as dispositive when S.R.I. disputes those statements were ever made. The MOI makes no attempt to contend with S.R.I.'s detailed declaration regarding his

interactions with Department of Homeland Security (DHS) officers, ECF No. 1-2, and does not discuss or reference the declaration's recitation of events. ECF No. 6-1 at 71-73. Respondents cannot simply state the conclusion that S.R.I.'s declaration is "convenient" and then ignore it. *Id.* at 73.

16. To borrow from the MOI's language, this "convenient" reasoning is immediately manifest in the Respondent's Return. The Return commences with a mischaracterization unsupported by evidence, arguing that "[a]t the time of entry, [S.R.I.] provided a birth date of [redacted] which also appeared on the Ethiopian passport in his possession." ECF No. 6 at 2. No evidence in the record suggests that S.R.I. presented, or had in his possession in the United States, a passport. *See* ECF No. 6-1 at 4. Both Form I-213 Record of Deportable/Inadmissible [Noncitizen] [hereinafter "I-213"] and the Record of Sworn Statement in Proceedings under Section 235(b) of the Act [hereinafter "Sworn Statement"] recount that S.R.I. stated that he was born in 2009 during his first substantive conversation with Border Patrol. ECF No. 6-1 at 4 (I-213); ECF No. 6-1 at 17 (Sworn Statement). The I-213 indicates that Customs and Border Protection (CBP) moved S.R.I. between locations multiple times and questioned him several times, over the course of multiple days,[3] before it states in the final line of two pages of narration that "S.R.I. admitted that he was twenty-five years old." ECF No. 6-1 at 4-5. This is a far cry from providing a date of birth of 2000 at entry.

17. The so-called admission in I-213 itself contains multiple indicia of unreliability, none of which the MOI considered. First, DHS does not even contend that an interpreter was present for this statement. *See* ECF No. 6-1 at 5. Second, the only Sworn Statement produced by CBP demonstrates that S.R.I. reported that he was born in 2009. ECF No. 6-1 at 17. Third, Respondents have neither produced nor

[3] The I-213 notes that CBP arrested S.R.I. on the morning of May 6, 2026 and was signed on May 9, 2026. ECF NO. 6-1 at 1-2.

referenced any recording, transcript, or even officer notes of S.R.I. allegedly admitting to being 25 years old.

18. Fourth, the alleged admission is recounted in incredibly little detail. In the early narration of the I-213, the author recounts the date and time of particular interactions and the name of the officer involved. *See* ECF No. 6-1 at 4. In contrast, S.R.I.'s supposed admission includes no such information; the entirety of the description states he "admitted that he was twenty-five years old." *Id.* at 5. Fifth, the officer to whom he allegedly said this is not named. *Id.* It does not appear to be Border Patrol Agent Juan C. Bribiesca who signed the report on May 9, 2026. *Id.* Agent Bribiesca referred to other officers, did not write in the first person, and used the passive voice to describe actions that CBP took. *See id.* at 4-5. Instead, Agent Bribiesca appeared to report second- or third-hand information.

19. Sixth and finally, the language used in the I-213 indicates that CBP never even considered that S.R.I. might be telling the truth. The Border Patrol Agent wrote:

> Despite receiving the warning of false [sic] representing information to a federal agent, upon arriving at the Brown Field Border Patrol Station, [S.R.I.] falsely stated that he was a juvenile, presumably [sic] avoid spending time in a jail facility, and to expedite his assimilation into [t]he United States illegally. While [S.R.I.] was being processed as a juvenile, based on the false information his birth certificate stated, information was found, in his records, that showed he had been using a visa, at an earlier date, that showed his true date of birth.

ECF No. 6-1 at 4. Already, the Border Patrol officer imputed to S.R.I. a totally speculative motive and assumed that S.R.I.'s passport was correct, documents stating otherwise were fraudulent, S.R.I. was lying, and all other statements and documentation were misrepresentations or fraud. Not once do the officers consider other possibilities.

20. As if the unreliability of the I-213 were not enough, the MOI baselessly attributes statements to S.R.I. that can be found nowhere in the evidence. Contrary to

S.R.I.'s detailed sworn declaration, ECF No. 1-2 at 3 ¶ 14, the MOI invents that "[w]hen confronted with the use of a passport indicating his date of birth as May 22, 2000, S.R.I. initially responded by denying that he had used a passport showing his date of birth as [redacted][.]" ECF No. 6-1 at 71. The MOI does not cite a source for this statement and none seems to exist. *See* ECF No. 6-1 at 4-5 (I-213). S.R.I. swears that he never lied about using the passport but instead honestly explained that he traveled with a passport with a fraudulent age when asked about his travel documents. Ex. A (Petitioner's Supplemental Declaration) ¶ 1; ECF No. 1-2 at 3 ¶ 14.

S.R.I.'s Alleged Statements in Credible Fear Interviews

21. To determine whether S.R.I. is an unaccompanied child, the MOI relies heavily on S.R.I.'s supposed statements during the credible fear process—even though unaccompanied children may not be in expedited removal proceedings (and therefore the credible fear process), 8 U.S.C. § 1232(a)(5)(D)(i). ECF No. 6-1 at 71. The MOI entirely failed to mention that unaccompanied children may not be placed in expedited and credible fear proceedings and lacks any explanation for why credible fear proceedings were nonetheless a reliable way to assess age. *See* ECF No. 6-1 at 71-73.

22. If S.R.I. is an unaccompanied child, the government was prohibited from placing him in expedited removal in the first place. 8 U.S.C. § 1232(a)(5)(D)(i). That means he should never have been subjected to the very credible fear screening process from which DHS now extracts statements to prove he is an adult. Put differently, Respondents cannot bootstrap statements generated through their own TVPRA violation into evidence that S.R.I. is not an unaccompanied child. DHS relies on evidence generated through the very process whose legality depends on the answer to the disputed age question.

23. Congress's decision not to place unaccompanied children into expedited removal proceedings was not simply an act of kindness. Congress ordered distinct

procedural and substantive rules be promulgated to manage the specialized needs of unaccompanied children. 8 U.S.C. § 1232(d)(8). It is well-documented in forensic psychology that "children are highly susceptible to be influenced by leading and suggestive questioning, forced-choice (i.e., yes/no) questions, [and] interviewer pressure or demeanor[.]."[4] "Decades of scientific research have demonstrated how to interview children to obtain accurate and complete reports of their experiences . . . .This evidence highlights the critical need for clear protocols regarding when and how children should be interviewed, including how questions should be phrased. Research also points to the necessity for extensive training of professionals who conduct the interviews."[5] In fact, at least one study indicated that interviewers expect coherent, consistent, and informed answers from children and question the credibility of children who do not provide such information.[6]

24. The credible fear process does not account for child psychology. If S.R.I. is a minor, these interviews cannot be considered reliable. This is especially true because S.R.I.'s immigration attorney was not present for any of the three interviews. ECF No. 6-1 at 30, 33, 43.

25. S.R.I. swears he never told the interviewers that he was born in the year 2000 during the credible fear interviews. Ex. A ¶ 3; ECF No. 1-2 at 6 ¶¶ 31-32. Respondents use the officer notes from the July 16 and July 21 interviews to argue

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[4] Shayla Chilliak et al., *Interviewing Asylum-Seeking Children: A Scoping Review of Research to Inform Best Practices*, 25 Trauma, Violence, & Abuse, 3680, 3681 (2024), https://journals.sagepub.com/doi/full/10.1177/15248380241260014 (citations omitted).

[5] Jodi A. Quas & Thomas D. Lyon, *Questioning Unaccompanied Immigrant Children: Lessons from Developmental Science on Forensic Interviewing*, 6 Soc'y for Rsch. in Child Dev. (Oct. 2019), https://www.srcd.org/research/questioning-unaccompanied-immigrant-children-lessons-developmental-science-forensic.

[6] *See* Chilliak et al., *Interview Asylum-Seeking Children*, *supra* n.2 at 3685 (compiling key findings in a literature review of many studies).

that S.R.I. stated that he was born in 2000. ECF No. 6-1 at 71. This dispute would be easily resolved if Respondents produced recordings of the interviews.

26. Even without recordings, there is evidence to support S.R.I.'s version of events beyond his declarations and the July 30 interview. ECF No. 6-1 at 46 (July 30 Interview); Ex. A ¶ 3 (Supplemental Declaration); ECF No. 1-2 at 3 ¶¶ 31-32 (Declaration). Both the July 16 and July 21 interview incorrectly recorded S.R.I.'s name as "I.S.R." (or "S.R., I."). Ex. D at 1, 3. This is so even though S.R.I. remembers correcting the July 16 interviewer, before the Somali interpreter joined, that she had reversed his first and last name. Ex. A ¶ 3. The listing of S.R.I.'s name incorrectly in the preliminary part of the interviews casts doubt as to whether he was asked the questions in this section at all or that his answers were accurately recorded in the officer's notes.

27. Indeed, the name and date of birth "questions" are listed under "Interview Format" immediately after prompts for the interviewer that are *not* questions, including "Detention Status," "Detention Location," and "Method of Interview," and immediately before the type of *pro forma* questions that are sometimes skipped, like "Is anyone else in the room with you"? *Id.* This is not a section of the interview where the interviewer expects to obtain any new information and it might be filled out in advance or after the fact.

28. This is particularly salient for the July 16 "interview." Both S.R.I.'s Supplemental Declaration and the officer's notes from the interview suggest that the interview was no more than the exchange of a few sentences about the availability of S.R.I.'s immigration lawyer and rescheduling. Ex. A ¶ 3; ECF No. 6-1 at 29-31. S.R.I. describes this "interview" as mostly waiting for the interviewer – to find a Somali interpreter and then to determine rescheduling approval. Ex. A ¶¶ 2-3. The information in the heading of the notes document even contains a clear error. S.R.I.'s entry date is listed as "2026-07-01," ECF No. 6-1 at 29, which is clearly wrong. *See* ECF No. 6-1 at 2 (I-213); ECF No. 1-2 at 2 ¶ 14 (S.R.I.'s Declaration).

29. Finally, if S.R.I. stated that he was born in 2000 in his July 21 interview, it is not immediately clear what would prompt another interview, much of which focused on questions about S.R.I.'s age. ECF No. 6-1 at 45-47.

30. The MOI concludes that S.R.I.'s denials and explanations in the July 30 interview regarding his alleged admissions were unreasonable, but does not explain why. ECF No. 6-1 at 73. Beyond stating in a laundry list that it considered S.R.I.'s declaration, it inexplicably does not engage with S.R.I.'s explanations in his declaration, which generally align with the statements he gave in the July 30 interview but provide more context. For example, the MOI does not say why it was unreasonable for S.R.I.'s guardian following his father's death to help him secure a passport that would allow him to flee the country. The MOI does not explain why it is unreasonable that a teenager does not know the details of how their guardian obtained a document for them. Nor does the MOI even consider the possibility that an unaccompanied Ethiopian child may indeed need an adult in order to leave the country by plane.

31. The MOI also seems to misconstrue the officer's notes in the July 30 interview. The notes state:

> Q: Records show that you admitted to immigration officers that you were 25 years old after being questioned. Can you please explain why you are insisting that you are a minor, 17 years old?
> A: I didn't tell them that, officer. Border patrol told me if you keep saying that you are 17 we will send you to jail for 8 years. Take this age. I said I don't want to go to jail. That's why. For my Ethiopian ID, it has the Ethiopian and the world date. When they saw 2001, they thought I was 25.

ECF No. 6-1 at 46. The MOI interprets this to mean the S.R.I. admits that he said he was 25 years old to CBP. *See* ECF No. 6-1 at 71 ("[S.R.I.] denied saying he was 25 years old and explained border patrol told him he would go to jail for 8 years if he kept saying he was 17 years old and they told him to take the age of

25, so he agreed."). But that is not a reasonable reading of an answer that starts with "I didn't tell them that, officer," especially considering that the answer was relayed through an interpreter and summarized by an English-speaker. ECF No. 6-1 at 46. To the extent there is any ambiguity, it was clarified by S.R.I., who explained in his declaration that he consistently told Border Patrol his true age when asked. ECF No. 1-2 at 5 ¶ 32.

32. The MOI does not meaningfully consider the totality of the evidence. Rather, the agency acted arbitrarily and capriciously by accepting the reports of its agents without question, even when indicia of unreliability made at least parts of those reports uncertain.

National ID Card

33. The MOI finds that S.R.I.'s national identification card is fraudulent because S.R.I. stated that he obtained the identification card at an office where you can buy a sim card for a phone. ECF 6-1 at 73; ECF 6-1 at 47. A quick search on the Ethiopian government's National ID website shows that you can register for a national identification (known as a "Fayda ID") at an "Ethio Telecom sales center."[7] Another minute on google shows that Ethio Telecom is a state-owned telecommunications company.[8] In fact, the officer's notes from the July 30 interview relay that, when asked where he went to get the identification card, S.R.I. said "The name of the office is Fayea located inside Ethio Teneton." ECF No. 6-1 at 47. The statement is clearly mis-transcribed or misinterpreted as S.R.I. went to a Fayda office inside Ethio Telecom.

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[7] *General FAQs*, National ID, https://id.gov.et/faq?page=2 (last visited Aug. 31, 2026).

[8] *About Us*, Ethio Telecom, https://www.ethiotelecom.et/profile/ (last visited Aug. 31, 2026).

34. Despite having the physical identification card in their possession, DHS did not arrange a forensic examination by a qualified person. The MOI mentions no reason that the card itself is suspicious. ECF 6-1 at 73.

35. Best-case scenario: the agency acted ignorantly by relying on unsupported assumptions about how the Ethiopian government functions. In this case, the failure to substantiate these assumptions was a failure to meaningfully consider the relevant evidence. Worst-case scenario: the agency acted maliciously, looking for reasons to discount evidence of S.R.I.'s minority. Either way the action was arbitrary and capricious.

Birth Certificate

36. The MOI concludes that S.R.I.'s birth certificate is fraudulent without a forensic examination or any examination by a knowledgeable person. Instead, it compares the passport to one sentence on the U.S. Department of State *Visa Reciprocity and Civil Documents* webpage.[9] ECF No. 6-1 at 72. It argues that the birth certificate appears inauthentic because it is not printed on a light gray background, it does not contain watermarking, and it does not have two flags in the upper corners as it should have because it was not issued in the capital, Addis Ababa. *Id.* The first two assertions appear to be incorrect. Petitioner was able to obtain a color copy of the birth certificate, which shows a light gray background and evidence of watermarks. Ex. B (Color Copy Birth Certificate).

37. S.R.I. acknowledges that there is only one flag on his birth certificate, the certificate was issued in Dollo Ado (in the Somali region of Ethiopia), and the visa reciprocity website states that "Ethiopian and regional flags are in both upper corners for all regions except in Addis Ababa City Administration." [10] Petitioner

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[9] U.S. Dep't of State, *Birth, Death, Burial Certificates, Ethiopia Reciprocity Schedule*, Travel.State.Gov, https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Ethiopia.html (last visited Aug. 31, 2026).

[10] *Id.*

contends that more thorough research shows legitimate birth certificates from the Somali region of Ethiopia have only one flag on top.[11]

38. Counsel was unable to authenticate the birth certificate through the Ethiopian embassy because S.R.I. fears persecution by the Ethiopian state but was able to communicate with practitioners and organizations that are more familiar with Ethiopian birth certificates. Counsel collected ten birth certificates issued in different parts of the Somali region of Ethiopia, all of which have only one flag at the top, like S.R.I.'s. *See* Ex. C (Birth Certificate Samples).[12] It is extraordinarily unlikely that all ten of these birth certificates are fraudulent. In addition, when S.R.I.'s birth certificate was issued in 2019, the State Department's Visa Reciprocity page did not state that Ethiopian birth certificates included flags in the upper corners.[13]

39. The MOI's conclusions about the "fraudulent" birth certificate appear to be incorrect. But the legally salient point is that Respondents cannot reasonably rely on the findings of an unqualified deportation officer with little to no knowledge of Ethiopia or an explanation of his forensics qualifications.

40. The author's limited knowledge of Ethiopia, and Ethiopian birth certificates in particular, is evident in the MOI. For instance, the MOI states that the handwritten entries in S.R.I.'s birth certificate are written "in the Amharic language using both Amharic and Latin characters." ECF No. 6-1 at 72. The birth certificate is in both

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[11] The State Department's Visa Reciprocity page notes that the "U.S. Embassy in Addis Ababa no longer accepts birth certificates issued in local formats after 2017." It is not clear if the single flag birth certificate is a "local format."

[12] The birth certificates have been redacted of names, parents' names, and days and months of birth to protect the privacy of their owners. They have not been translated because they are presented only as a formatting comparison.

[13] U.S. Dep't of State, *Birth, Death, Burial Certificates*, *Ethiopia Reciprocity Schedule*, Travel.State.Gov, https://web.archive.org/web/20190516170412/https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Ethiopia.html (Webpage captured by the Wayback Machine on May 16, 2019).

Somali and Amharic. Ex. B. The Latin characters are Somali. *Id.* It seems unlikely that the deportation officer writing the MOI looked at the translation of the birth certificate submitted with the habeas petition (or any translation at all), which indicated that it translated the Somali portions of the birth certificate. ECF No. 1-4 at 3. In addition, the MOI misspells the city of S.R.I.'s birth as "Dolio Ado" many times even though it is clearly written as "DOLLO ADO" on S.R.I.'s birth certificate. Ex. B.

41. Instead of a forensic or expert examination of S.R.I.'s birth certificate, a deportation officer made a cursory finding of fraud. DHS has a laboratory devoted to forensic document analysis.[14] But it chose not to use it. To rely on a finding of fraud this way, without reliable substantiation, is arbitrary and capricious.

Dental Age Assessment Report

42. The MOI states that it considered the forensic dental examiner's determination. However, it does not mention the fact that the age range presented by Dr. David R. Senn's Dental Age Assessment Report is *inclusive* of S.R.I.'s age (17) and *exclusive* of the age DHS repeatedly contends that S.R.I. is (25). ECF No. 61 at 75 ("[T]he interval of possible ages for [S.R.I.] is 17.27 to 23.09 years.").[15] As elsewhere, the MOI appears to have ignored the aspects of the evidence that were unfavorable to its conclusion.

43. Further, S.R.I. submitted four expert reports explaining the significant limitations of Dr. Senn's Age Assessment Report and dental age examinations in general. ECF Nos. 1-9 to 1-12. The MOI states "ICE ERO considered . . . the Innocence Project and Expert Forensic Anthropologists/Statistical Methodology Reports" and that the "biased reports are all given little or no weight." ECF No. 6-1 at 73. It makes no other reference to these reports and provides no indication the author

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[14] *HSI Forensic Laboratory*, U.S. Immigration and Customs Enforcement (last updated Aug. 14, 2026), https://www.ice.gov/hsi/centers-labs/forensic-lab.

[15] The report was filed in unredacted form by Respondents.

read them. The MOI does not explain why it concluded that the reports were biased. *See id.* These sorts of empty statements do not fulfill DHS's obligations to actually consider and explain the totality of the evidence, not just say it did.

44. In addition, the MOI appears to have copied and pasted material regarding a dental age assessment report from someone else's age investigation. The MOI describes a Report "that assessed the empirical statistical probability of IDIRIS having attained 18 years of age" and that "concluded that the mean estimated age for a male with third molar development equal to that of IDIRIS is 20.24 plus or minus 2.98 years." ECF 6-1 at 71. Idiris is not S.R.I.'s name. And the figures listed do not exactly match Dr. Senn's Dental Age Assessment Report of S.R.I., which stated that the estimated age was 20.18 plus or minus 2.91 years. ECF 6-1 at 75. Errors like this suggest that DHS did not seriously consider the available evidence in the MOI but quickly threw together whatever it could find to support the conclusion it had already made regarding S.R.I.'s age.

Affidavit of S.R.I.'s Sister

45. The MOI states that it considered the affidavit of S.R.I.'s sister, ECF No. 1-6, and then dismisses it as "biased" in the MOI's laundry list of evidence to which it gives "little or no weight." ECF No. 6-1 at 73. While S.R.I. acknowledges that affidavits from family members inherently carry some indicia of bias, the use of a single adjective does not meaningfully consider and analyze the presented evidence. For example, the MOI does not note that the affidavit is stamped and signed by a notary public or provide an explanation for its conclusion that it was biased. ECF No. 1-6 at 2.

School Report

46. The MOI states that it considered S.R.I.'s school report, which lists that S.R.I. was 13 years old in 2022, ECF 1-8. ECF No. 6-1 at 73. It again dismisses the report in a single word: "uncertified." ECF No. 6-1 at 73. The MOI does not

explain why an old school certificate must be certified to have any weight and does not seem to consider whether such a request is even possible.[16]

Hospital Records

47. The MOI states that it considered the emergency department medical report, ECF No. 1-7, and that it is "written in the English language." ECF No. 6-1 at 73. It says nothing further; it does not explain if the English language makes the document suspicious or not, and if it does, it does not state why. *Id.* The MOI does not observe that the hospital record is signed and stamped and lists treatment of a leg injury that S.R.I. described in his credible fear interviews. *Id.*; CF No. 1-7 (Hospital Record); ECF No. 6-1 at 48-49 (July 30 interview).

48. The Return framed the hospital record being in English as a grounds for suspicion, ECF No. 6 at 4, but this is entirely unsubstantiated. Neither the author of the MOI nor the U.S. Attorney's Office claim knowledge about the linga franca of the Ethiopian medical care system. In fact, brief research suggests "English is the most common foreign language spoken in Ethiopia and is the primary language of secondary schools and medicine."[17] To dismiss evidence based on unsubstantiated, and apparently inaccurate, assumptions is arbitrary and capricious.

Passport

49. The author of the MOI wrote that he obtained a copy of S.R.I.'s passport with the (incorrect) date of birth of [redacted] on August 10, 2026. ECF No. 6-1 at 72-73. However, MOI does not account for the rule (and the reality) that misrepresentations made by an asylum seeker for the purpose of fleeing their

[16] Interestingly, although the MOI seems to care about the certification of documents, it does not find favorable the fact that both the affidavit of S.R.I.'s sister and the hospital record *are* certified.

[17] Shane C. Quinonez et al., *Introducing Medical Genetics Services in Ethiopia Using the MiGene Family History App*, 21 Genetics in Med. 451, 453 (Feb. 2019), https://www.sciencedirect.com/science/article/pii/S1098360021046347.

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).

50. Moreover, though the MOI exhibits suspicion of how S.R.I. obtained his national identification card and birth certificate, and though S.R.I. does not know the details of how his passport was obtained, the MOI demonstrates no skepticism of S.R.I.'s passport – again demonstrating a clear bias in favor of evidence supporting an adult age. ECF No. 6-1 at 71-73. All evidence should be examined with reasonable scrutiny, not just the evidence that is contrary to Respondent's conclusion.

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51. The MOI facially claims to consider all evidence by referring to S.R.I.'s presented evidence in a laundry list. ECF 6-1 at 72-73. But DHS cannot simply state that it considered a document and then fail to meaningfully engage with its implications. This does not meet the dictates of the TVPRA and agency policy requirements to consider the totality of all available evidence. 8 U.S.C. § 1232(b)(4); ORR Policy Guide § 1.6; ICE Juvenile Coordinator Handbook § 3.1.2.

52. Where it does engage with the evidence, the MOI exhibits systematic favoritism towards the evidence supporting its predetermined conclusion that S.R.I. is an adult, for example relying without question on unreliable second or third-hand statements in the I-213 and concluding that S.R.I.'s national identification card was fraudulent based on inaccurate, and easily disproved, assumptions about Ethiopia. The MOI's explanations are therefore arbitrary and capricious and not supported by substantial evidence in violation of the APA. *See Motor Vehicle Manufacturers Ass'n*, 463 U.S. at 43 (stating the arbitrary and capricious standard).

RESPONDENT'S CONCESSIONS

53. Respondents also do not contest that they failed to meet the notification requirement of the TVPRA. Under 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." S.R.I. clearly made a claim that he was under 18 years of age to CBP. Respondents make no argument that they notified ORR.[18]

54. Further, Respondents provide no response to S.R.I.'s argument that the Dental Age Assessment Report failed to take into account "the individual's ethnic and genetic background," as required by ORR Policy Guide § 1.6.2.3, because the Report used data from a different genetic group (Black Americans) to assess S.R.I.'s molar development. Academic analyses of different ethnic groups show that the molar develops at substantially different rates in individuals of different ethnicities.[19] Opposition to this argument should therefore be considered conceded or waived.

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[18] The significance of this omission should not be understated. The statutory trigger is not certainty that an individual is a child, but rather "any claim or suspicion" that the individual may be under 18 years old and unaccompanied. 8 U.S.C. § 1232(b)(2). Here, S.R.I. repeatedly asserted that he was 17 years old and presented both a birth certificate and national identification card reflecting a 2009 birth date. At a minimum, those facts created a claim or suspicion of minority sufficient to trigger the notice requirement. Respondents do not contend that ORR was notified, do not produce any evidence that ORR was notified, and do not explain why the statutory notice requirement was not triggered or followed. Their silence is particularly notable because the entire basis for the age dispute is that DHS questioned whether S.R.I. was a minor. If DHS believed additional investigation was necessary to determine S.R.I.'s age, then DHS necessarily had at least a "suspicion" that he could be under 18 years old and was required to notify ORR.

[19] 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.

55. Respondents also do not respond to S.R.I.'s arguments regarding procedural due process and or implicitly address the claim in their arguments about S.R.I.'s age. Opposition to the procedural due process claim should similarly be considered conceded or waived.

SUBSTANTIVE DUE PROCESS

56. The Return argues that a due process violation in immigration detention exists when the government's conduct "shocks the conscience." ECF No. 6 at 6. As described in the habeas petition, this is not the appropriate standard. *See* ECF No. 1 at 32-34. Nonetheless, even under this standard, S.R.I.'s substantive due process claim succeeds.

57. The uncontested allegations show that Respodents held S.R.I. in solitary confinement for nine days in a medical-quarantine cell, ECF No. 1-2 at 4-5 ¶¶ 20-21, interrogated S.R.I. in the middle of the night without an interpreter, *id.* at 4 ¶¶ 15-16, threatened to send S.R.I. to jail if he did not admit he was 25 years old, *Id.*; ECF No. 6-1 at 4, placed S.R.I. in connected hand and ankle shackles, including on top of a prior injury, ECF No. 1-2 at 4 ¶ 17, and repeatedly and sometimes aggressively accused him of lying, ECF No. 1-2 at 3-6 ¶¶ 14-18, 21, 32; ECF No. 6-1 at 4-5, 46-47. Even treating an adult like this shocks the conscience, let alone a child.

58. S.R.I. requests that, just for a moment, the Court put aside any doubts and assume that S.R.I. is a minor and consider how a minor would respond and experience these situations. Would he know when the officers or interpreters misunderstood him? Would he know it is important to correct misunderstandings? Would he know *how* to correct misunderstandings? Would he even understand what was happening?

59. Intentionally or not, DHS has sucked S.R.I. into a veritable, endless nightmare. Orphaned by the death of both parents, [redacted] he left everyone he knew behind to find safety. ECF No. 1-2 at 2-3 ¶¶ 3, 5-8, 13. Instead,

he found himself in prison in the United States where no one believes what he says and aggressively threatens and accuses him of fraud and falsehoods. He does not understand why this is happening and is terrified of being sent back to Ethiopia where he truly believes he will be killed. ECF No. 1-2 at 6 ¶ 36.

CONCLUSION

60. Because Respondents continue to unlawfully hold S.R.I. in adult detention in violation of the TVPRA, the *Flores* Settlement Agreement, the APA, and the U.S. Constitution and because DHS's initial and subsequent age determinations violate the TVPRA, the APA, and the U.S. Constitution, S.R.I. continues to ask for the same relief requested in his habeas petition. ECF No. 1 at 36.

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Respectfully submitted,

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