Brian J. McGoldrick (California #169104)
Counsel for Petitioner
4916 Del Mar Avenue
San Diego, CA 92107
(619) 675-2366
attorney@brianmcgoldrick.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

[redacted],

Petitioners,

vs.

CHRISTOPHER LAROSE, warden of Otay Mesa Detention Center;
PATRICK DIVVER, San Diego Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO");
TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE");
MARKWAYNE MULLIN, Secretary of the Department of Homeland Security ("DHS");
ACTING Attorney General of the United States,
U.S. DEPARTMENT OF HOMELAND SECURITY;
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT;

Respondents.

Case No.: '26CV4708 BTM GC

Agency Number: [redacted]

PETITION FOR WRIT OF HABEUS CORPUS AND ORDER TO SHOW CAUSE.

EXPEDITED RELIEF REQUESTED

PETITIONER IS AN UNACCOMPANIED MINOR BEING TREATED AND HOUSED AS AN ADULT IN EXPEDITED REMOVAL

1. [redacted] ("Mr. [redacted]" or "Petitioner") is a 15-year-old boy from Ethiopia born [redacted]. Upon his entry into the United States on 05 July 2026 and apprehension he advised officers that he is 15 years old. He had his birth certificate with him which supported his contention he was 15. Counsel does not yet have a copy of this document as it was confiscated by Respondents.

2. After informing Respondents that he is a minor he was taken to Otay Mesa Detention Center. Respondents chose to ignore his birth certificate and with nothing other than a hunch, housed him at OMDC with the adult male population there. About a week after his arrival Respondents took radiographs of his mouth. Counsel is informed and thereby alleges that Respondents are attempting to subject Mr. [redacted] to a Credible Fear Interview in furtherance of Expedited Removal.

3. The code is clear that Unaccompanied Minors (UAC) are to be housed separately and treated under a completely different set of procedures. *See* 8 CFR § 236.3. UAC are not subject to expedited removal.

JURISDICTION

4. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.

5. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

6. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

VENUE

7. Venue is proper because Petitioner is in Respondents' custody in San Diego County, California. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

8. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must

require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

9. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

10. Petitioner is "in custody" for the purpose of § 2241 because he was arrested and detained by Respondents.

PARTIES

11. [redacted] is a 15-year-old citizen of Ethiopia. He is currently detained at Otay Mesa Detention Center and is present within the state of California as of the time of the filing of this petition.

12. Respondent Christopher LaRose is the warden of the Otay Mesa Detention Center and is the legal custodian of Petitioner.

13. Respondent, Patrick Divver, is the San Diego Field Office Director, Immigration and Customs Enforcement and Removal Operations. The San Diego Field Office is responsible for local custody decisions relating to non-citizens charged with being removable from the United States, including the arrest,

detention, and custody status of non- citizens. The San Diego Field Office area of responsibility includes the Otay Mesa Detention Center. Respondent Patrick Divver is a legal custodian of Petitioners.

14. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent Patrick Divver and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

15. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Mullin is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States.

16. Respondent Todd Blanche, is Attorney General of the United States and has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

17. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

18. Respondent U.S. Department of Homeland Security is the federal agency that has authority over the actions of ICE and all other DHS Respondents.

19. This action is commenced against all Respondents in their official capacities.

LEGAL FRAMEWORK

20. The rights and procedures that pertain to minors in immigration custody are set out at 8 CFR § 236.3. This sets out the definition of an unaccompanied minor.

> **(3)** ***Unaccompanied alien child*** (UAC) has the meaning provided in 6 U.S.C. 279(g)(2), that is, a child who has no lawful immigration status in the United States and who has not attained 18 years of age; and with respect to whom: There is no parent or legal guardian present in the United States; or no parent or legal guardian in the United States is available to provide care and physical custody. 8 CFR § 236.3(b) (3)

21. The method of determining the age of a minor is multifaceted. This is set out in 8 U.S. Code § 1232(b)(4).

> **(4)Age determinations** The Secretary of Health and Human Services, in consultation with the Secretary of Homeland Security, shall develop procedures to make a prompt determination of the age of an alien, which shall be used by the Secretary of Homeland Security and the Secretary of Health and Human Services for children in their respective custody. 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.

22. The law requires that an unaccompanied child be transferred to an Office of Refugee Resettlement (ORR) shelter within 72 hours, although children are often held for longer. ORR is an agency within the U.S. Department of Health and Human Services (HHS). Since 2003, the agency has been tasked with the safety and care of unaccompanied children, as well as reunification with a suitable sponsor to care for the child while the child undergoes removal proceedings. UAC also are not subject to Expedited Removal.

23. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

FACTUAL BACKGROUND

24. [redacted] ("Mr. [redacted]" or "Petitioner") is a 15-year-old boy from Ethiopia born [redacted]. He is ethnically Somali and speaks the Somali language. [redacted]

25. At the time Mr. Wali was to leave Ethiopia, he was only 15. Minors cannot travel alone so his mother had a passport made that changed his

year of birth to 2004. This allowed him to leave the country. However, this is not his actual year of birth. He was born in 2010. He also had his birth certificate which shows his year of birth as 2010.

26. He was smuggled from Ethiopia to Thailand, Singapore and finally Mexico City. From Mexico City he was sent to a safe house in Tijuana. He was there only a day when his guides turned on him, took all his belongings, money and passport and then released him. He was taken to a group of migrants that were crossing the border and he joined them. Once across the border he surrendered to CBP.

27. He immediately told the officers that he was born in 2010 and was only 15 years old. However, with no evidence to support their decision, ICE officers did not believe him. He was then taken to Otay Mesa Detention Center.

28. He informed the Otay Mesa Detention Center personnel that he was only 15. He was taken for x-rays of his mouth and was returned to the general population. He has no idea of the status of the x-rays.

29. Noncitizens frequently use false passports to escape their oppressors and to facilitate international travel. For someone as young and Mr. [redacted] having this falsified passport was essential for him to leave Ethiopia and

travel around the world to end up in Mexico. Many courts have recognized this need.

30. Passports depend on birth certificates and other forms of identification to be created. The Birth Certificate is the primary document to demonstrate place and date of birth. Mr. [redacted] has presented his birth certificate to Respondents to prove his actual age. Respondents have made radiographs of his mouth but Mr. [redacted] has not been shown those documents nor has he been told of the results.

31. Despite the fact that Mr. [redacted] is only 15 years old, Respondents have housed him with the adult population at Otay Mesa Detention Center and have placed him in Expedited Removal.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

Procedural Due Process

32. Petitioner restates and realleges all paragraphs as if fully set forth here.

33. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life,

liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas,* 533 U.S. at 693.

34. Due process requires that government action be rational and nonarbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

35. The Respondents have denied Mr. [redacted] his right to be considered an unaccompanied minor and all the procedural rights that go along with that determination. They have also elected to wrongfully detain him with an adult population at Otay Mesa Detention Center and they seek to remove him via Expedited Removal which is prohibited by the code.

COUNT TWO

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)

Not in Accordance with Law and in Excess of Statutory Authority

Unlawful Detention

36. Petitioner restates and realleges all paragraphs as if fully set forth here.

37. Under the APA, a court shall "hold unlawful and set aside agency action" that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

38. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." Nat'l Ass'n of Home Builders v. Defs. of Wildlife, 551U.S. 644, 658 (2007) (quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)).

39. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." Dep't of Com. v. New York, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

40. By categorically asserting Petitioner is not an unaccompanied minor and transferring him to Otay Mesa Detention Center without consideration of his individualized facts and circumstances, Respondents have violated the APA.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(3) Order Respondents to make Petitioner's Birth Certificate and results of the radiographs available to the Court and to the Petitioner;

(4) Declare that Petitioner's detention as an adult at Otay Mesa Detention Center violates the Due Process Clause of the Fifth Amendment and the Administrative Procedures Act;

(5) Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;

(6) Issue a Writ of Habeas Corpus finding that Mr. [redacted] is an unaccompanied minor and must be housed and processed accordingly;

(7) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(8) Grant any further relief this Court deems just and proper.

Dated: August 17, 2026

/s/ Brian J. McGoldrick

BRIAN J. MCGOLDRICK, ESQ.
attorney@brianmcgoldrick.com
4916 Del Mar Avenue
San Diego, CA 92105
Telephone: +1 619-675-2366
Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this 17th day of August, 2026, in San Diego, California.

/s/ Brian J. McGoldrick

Brian J. McGoldrick, Esq.