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Pro Bono Attorney for Petitioner

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

[redacted]

Petitioner;

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;

Case No.: 26-cv-04708-BTM-GC

REPLY TO SUBMISSION OF EVIDENCE WITH EXHIBITS A-D

Petitioner, [redacted] by and through his attorney of record, Brian J. McGoldrick, makes this reply to the return submitted by respondents.

INTRODUCTION

Petitioner has asserted since his arrival in the United States that his birthday is [redacted] and he is 15 years old. He presented a copy of his birth certificate to support his contention. He also explained that his passport was forged by the smuggler that got him out of Ethiopia but was taken from him before he entered the United States. On August 5, 2026, he was found to have a credible fear of future persecution and specifically credible by an asylum officer as to his identity. This was further confirmed by a supervisor on August 8, 2026. *See* Exhibit 7 EOIR page 16 of 44. The medical report submitted as Exhibit 2 is based solely on statistical probabilities and is not a definitive indicator of age.

Considering the totality of the circumstances and evidence, this court should find that Mr. [redacted] was born on [redacted] and qualifies as an unaccompanied minor.

THE MEDICAL REPORT IS NOT CONCLUSIVE

The examination of M3 development to determine age of a subject is based on statistical averages derived from data sets both here in the United States and other parts of the world. These data sets themselves show wide variation in the

development of the M3 molar. The medical report submitted by the Respondents itself has a margin of error of plus or minus nearly 3 years. That's a six-year range in the assessment of Mr. [redacted] What this report lacks is a statement of the actual data set used. This is important to understand because, as set out in *A radiographic study of the mandibular third molar root development in different ethnic groups* attached as Exhibit A to this reply, Sub-Saharan males have an earlier than average M3 development. *See* Exhibit A p 10. This makes the medical report unreliable to establish an age range for Mr. [redacted] and should not be considered or, at the very least, be given very little weight in the court's consideration.

THE PASSPORT IS UNRELIABLE

Mr. [redacted] has consistently stated that the birth date on his passport is not his actual birthdate. He has provided a reasonable explanation for this discrepancy. Minors cannot travel on their own out of Ethiopia. He would have to be accompanied by a parent or a designated adult guardian. The smuggler that assisted him did not want to be associated with him as a guardian and did not want to be accused of trafficking a minor. It was he who acquired the passport with the false birthdate which allowed their international travel. *See* Exhibit 7 p 23 of 44. Further, someone confiscated the passport from Mr. [redacted] before he was allowed to enter the United States in a further attempt to insulate him from prosecution. It is

not uncommon for those fleeing persecution to acquire false travel documents so they can escape their persecutors without detection.

THE BIRTH CERTIFICATE ESTABLISHES MR. WALI'S AGE

Respondents submitted a very poor copy of the birth certificate. Counsel has submitted a much clearer copy as Exhibit B. The copy has the bold blue frame and is much more legible. Counsel has not seen the document Respondents have submitted but this does not appear to be an original. It appears to be a copy of the original. If that is the case, it couldn't be expected to have the proper color and marks. Petitioner also contends that the single flag/double flag appearance on the birth certificate is not a hard and fast rule. This depends on the agency and location of where the certificate is being produced. The petitioner does not know why the birth certificate says Jigjiga. His understanding is he was born in Dagahbuur. He has consistently testified to that. Attached as Exhibit C is a copy of an ID card from Dagahbuur. Counsel has not had an opportunity to have it translated yet but it also lists his year of birth as 2010.

Finally, Petitioner submits a copy of his Fayda, the National ID of Ethiopia as Exhibit D. This has his national tracking ID number listed on the front. His biometric data should be accessible to Respondents with that number. Counsel is attempting to get a complete copy of the back of the card as this also lists where he was born. The National ID shows his birthdate as [redacted]

RESPONDENTS INDEPENDENTLY FOUND PETITIONER CREDIBLE

Exhibit 7 submitted by Respondents are the Credible Fear Interviews taken by the Respondents while Petitioner has been housed at Otay Mesa Detention Center. Mr. [redacted] consistently complains that he is afraid in the adult facility and is not treated well there. He also consistently tells the story of his persecution in Ethiopia and consistently explains the date on the passport and his real birthdate. As noted above, Respondents found him credible on August 5, 2026. This credibility finding went specifically to his identity. The form establishes his identity by:

4.23 Alien's own credible statements (If testimony is credible overall, this will suffice to establish the alien's identity with a reasonable degree of certainty)

See Exhibit 7 page 16 of 44.

A supervisor also approved this credibility finding on Aug 8, 2026. *Id.*

It appears contradictory for Respondents to continue to assert that Mr. [redacted] is actually 21 based on a forged passport, an inclusive medical exam and in the face of their own agency asserting that Mr. [redacted] has established his identity by his own credible statements.

CONCLUSION

Based on the evidence before the court and Mr. [redacted]'s own credible testimony in his interviews, this court should find that Mr. [redacted] has established his

birthdate to be [redacted] and he is an unaccompanied minor. The court should order that Mr. [redacted] be removed from Otay Mesa Detention Center and be taken to a facility for unaccompanied minors and be treated accordingly.

Respectfully Submitted,

August 23, 2026

/s/Brian J. McGoldrick
Pro Bono Counsel for Petitioner

I, Brian J. McGoldrick, CERTIFY

I am over the age of 18 and not a party to this matter. My business address is 4916 Del Mar Avenue, San Diego, CA 92107. On August 23, 2026, I served a copy of this

REPLY TO SUBMISSION OF EVIDENCE WITH EXHIBITS A-D

by the method and to the parties listed below:

On August 23, 2026, I accessed the electronic mailing list for CM/ECF users in this case and representatives of all parties are CM/ECF users and are noticed as follows:

- Erin Dimbleby erin.dimbleby@usdoj.gov,anna.zarazua@usdoj.gov,USACAS.Habeas2241@usdoj.gov,caseview.ecf@usdoj.gov,Efile.dkt.civ@usdoj.gov
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