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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

L.B.,

Petitioner,

v.

Charles Keeton, et al.,

Respondents.

No. CV-18-03435-PHX-JJT (MHB)

ORDER

Petitioner L.B., who is detained in the CoreCivic La Palma Correctional Center in Eloy, Arizona, has filed, through counsel, a Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 (Doc. 1) and a Motion for Temporary Restraining Order (Doc. 2). On October 26, 2018, Respondents filed a Response to the Motion (Doc. 10). For the reasons that follow, the Court will grant the Motion in part.

I. Background

Petitioner is a native and citizen of Eritrea. On January 4, 2018, he entered the United States near the San Ysidro port of entry in San Diego, California and was encountered by the United States Department of Homeland Security (DHS), Customs and Border Protection (CBP). (Docs. 10-1; 10-2.) At the time of entry, Petitioner did not possess travel documents and informed agents that his date of birth was October 28, 2000. Petitioner was designated as an unaccompanied minor (UAC), issued a Notice to Appear (Form I-862), and transferred into the care and custody of the Office of Refugee Resettlement (ORR), an agency of the United States Department of Health and Human

1 Services (HHS). ORR placed Petitioner in Southwest Keys juvenile residential care
2 facility in California.

3 In the months that followed, ORR ordered a dental examination to determine
4 Petitioner's age. On March 16, 2018, Dr. David R. Senn, DDS prepared a report in
5 which he opined that, based upon his analysis of dental radiographs, the range of possible
6 ages for a male with the molar development of Petitioner was "17.10 to 23.70 years." On
7 this basis, he concluded that the "empirical statistical probability of [Petitioner] having
8 attained 18 years of age [was] 92.55." (Doc. 1-2 at 6.) No action was taken at that time,
9 and on May 29, 2018, Petitioner was transferred to VisionQuest, a juvenile residential
10 facility in Tucson, Arizona.

11 While he was housed at VisionQuest, L.B., with the assistance of counsel,
12 Petitioner began dependency proceedings in the Pima County Superior Court. During
13 that process, counsel for L.B. obtained a baptismal certificate which reflected L.B.'s birth
14 date as October 28, 2000. (Doc. 1-2 at 2.) Counsel also obtained a rebuttal expert report
15 as to Petitioner's age from Drs. Elizabeth DiGangi and Dawnie Steadman, forensic
16 anthropologists, and Iain A. Pretty, a dental surgeon and professor of public health
17 dentistry. (Doc. 1-2 at 54-64.)

18 On August 15, 2018, Catherine Laurie, an ORR Federal Field Specialist,
19 "reviewed [] documentation gathered by VisionQuest." (Doc. 1-2 at 39.) In a memo
20 addressed to DHS in reference to Petitioner, Laurie stated that "this UAC does not have a
21 birth certificate despite many attempts to reach the Eritrean Embassy, and the dental
22 forensic results being 92.55 percent. This UAC's behaviors do not appear to be a minor
23 but to the contrary he acts like an early 20's person. The original date of birth and the one
24 that appears on the [Form] I-216 indicates that [L.B.] was 17 years of age with a date of
25 10/28/200[0]. I agree that this person is over the age of 18 years... Please refer this case
26 to DHS ICE Juvenile Coordinator to arrange for transfer to ICE adult custody." (Id.)
27 Petitioner was transferred into DHS custody and detained in an adult detention facility.

28 On October 10, 2018, the Pima County Superior Court entered three orders of

1 Findings of Fact and Conclusions of Law. (Doc. 1-2 at 66-67, 69-72, 74-77.) The state
2 court found, in relevant part, that Dr. Senn’s expert opinion was “not supported by
3 credible scientific evidence and best practices,” that L.B.’s birth date is October 28, 2000,
4 that L.B. is a minor, and that L.B. is a dependent child. (Doc. 1-2 at 79-80.)

5 On October 15, 2018, counsel for L.B. emailed DHS officials a copy of
6 Petitioner’s baptismal certificate and the state court decisions requesting that Petitioner
7 be transferred back into ORR custody. ICE Supervisor Shane Kitchen responded that he
8 “spoke with [his] leadership and they advised after due deliberation, ERO has concluded
9 that there is sufficient evidence to determine [Petitioner’s] adult status, based on the
10 greater than 92% probability that he is older than 20 years old. Further, ERO gives less
11 weight to the Baptismal record based on his documented history of fraudulent document
12 use. He will not be returned to ORR custody.” (Doc. 1-2 at 82.) On October 16, 2018,
13 Petitioner received an email from ICE Assistant Field Office Director Jason Ciliberti
14 stating that “[they] have reviewed the available documentation and evidence [counsel]
15 presented, and the matter was discussed with [his] leadership at the field office. After
16 careful deliberation, [they] have determined that [L.B.] will remain in ICE custody.”
17 (Doc. 1-2 at 85.)

18 **II. Habeas Corpus Petition**

19 A federal district court is authorized to grant a writ of habeas corpus under
20 28 U.S.C. § 2241 where a petitioner is “in custody under or by color of the authority of
21 the United States ... in violation of the Constitution or laws or treaties of the United
22 States.” 28 U.S.C. §§ 2241(c)(1), (3). “The writ of habeas corpus historically provides a
23 remedy to non-citizens challenging executive detention.” *Trinidad y Garcia v. Thomas*,
24 683 F.3d 952, 956 (9th Cir. 2012). *See also Munaf v. Geren*, 553 U.S. 674, 693 (2008)
25 (“Habeas is at its core a remedy for unlawful executive detention”); *Allen v. McCurry*,
26 449 U.S. 90, 98 n.12 (1980) (“the unique purpose of habeas corpus [is] to release the
27 applicant for the writ from unlawful confinement”).
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1 Habeas corpus review is not available for claims “arising from the decision or
2 action by the Attorney General to commence proceedings, adjudicate cases, or execute
3 removal orders,” 8 U.S.C. § 1252(g), or to “challenge a ‘discretionary judgment’ by the
4 Attorney General or a ‘decision’ that the Attorney General has made regarding [an
5 alien’s] detention or release,” *Demore v. Kim*, 538 U.S. 510, 516 (2003) (discussing 8
6 U.S.C. § 1226(e)). However, “the extent of the Government’s detention authority is not a
7 matter of ‘discretionary judgment,’ ‘action,’ or ‘decision.’” *Jennings v. Rodriguez*, ___
8 U.S. ___, 138 S. Ct. 830, 841 (2018). *See also Prieto-Romero v. Clark*, 534 F.3d 1053
9 (9th Cir. 2008). Thus, “challenges to the statutory framework that permits the alien’s
10 detention without bail,” *Jennings*, 138 S. Ct. at 841, “questions of law” raised in the
11 application or interpretation of detention statutes, *Leonardo v. Crawford*, 646 F.3d 1157,
12 1160 (9th Cir. 2011), and “claims that the discretionary process itself was constitutionally
13 flawed are ‘cognizable in federal court on habeas because they fit comfortably within the
14 scope of § 2241,’” *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011) (quoting
15 *Gutierrez-Chavez v. INS*, 298 F.3d 824, 829 (9th Cir. 2002)).

16 On October 24, 2018, Petitioner filed the instant § 2241 Petition, four days before
17 his alleged 18th birthday on October 28, 2018. In the Petition, Petitioner names La
18 Paloma Correctional Center Warden Charles Keeton, ICE, ICE Phoenix Field Office
19 Director Enrique Lucero, and ICE Assistant Field Office Director Jason Ciliberti as
20 Respondents.¹ Petitioner brings four grounds for relief challenging his continued
21 detention in DHS custody. The Petition claims that: (1) by making and relying on an age
22 determination to transfer Petitioner into DHS custody, based on dental radiographs and
23 without reasonable suspicion to question the credibility of Petitioner’s stated age,
24 Respondents violated the Trafficking Victims Protection and Reauthorization Act of 2008

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26 ¹ Under the rationale articulated in *Armentero, infra*, and in the absence of
27 authority addressing whether who is the proper respondent in immigration habeas corpus
28 proceedings under 28 U.S.C. § 2241, the Court will not dismiss these Respondents or the
Petition for failure to name a proper respondent *at this time*. *See Armentero v. INS*, 340
F.3d 1058, 1071-73 (9th Cir. 2003) withdrawn, 382 F.3d 1153 (9th Cir. 2004) (order); *see also Rumsfeld v. Padilla*, 542 U.S. 426, 435 n.8 (2004) (declining to resolve who is the
proper respondent in an immigration habeas corpus petition).

1 (TVpra), 8 U.S.C. § 1232(b)(4), and its implementing policies; (2) by holding
2 Petitioner, a minor, in custody in a facility that does not have “separate accommodations
3 for juveniles,” Respondents have detained Petitioner in violation of 8 C.F.R. § 1236.3(d);
4 (3) by arbitrarily depriving Petitioner of his liberty, Respondents have detained Petitioner
5 in violation of his substantive due process rights under the Fifth Amendment; and (4) by
6 taking Petitioner into DHS custody without a hearing, Respondents have detained
7 Petitioner in violation of his right to procedural due process under the Fifth Amendment.²

8 In his demand for relief, Petitioner asks the Court to: (1) order Respondents to
9 release Petitioner from DHS custody and transfer him into the care and custody of ORR;
10 (2) declare that ORR’s policy of making age determinations based solely on dental
11 radiographic analysis, and of transferring individuals into DHS custody if the results
12 predict a 75% probability or more that the individual is 18 years or older, violates 8
13 U.S.C. § 1232(b); and (3) enjoin Respondents from further detaining Petitioner in
14 violation of federal law and the Constitution.

15 **III. Motion for Temporary Restraining Order**

16 A party seeking injunctive relief under Rule 65 of the Federal Rules of Civil
17 Procedure must show that: (1) he is likely to succeed on the merits; (2) he is likely to
18 suffer irreparable harm in the absence of injunctive relief; (3) the balance of equities tips
19 in his favor; and (4) an injunction is in the public interest.³ *Winter v. Natural Resources*
20 *Defense Council, Inc.*, 555 U.S. 7, 20 (2008); *Pom Wonderful LLC v. Hubbard*, 775 F.3d
21 1118, 1124 (9th Cir. 2014); *Pimentel v. Dreyfus*, 670 F.3d 1096, 1105-06 (9th Cir. 2012);

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23 ² The Court observes that while the Petition cites the Administrative Procedure
24 Act (APA), 5 U.S.C. § 701 *et seq.*, as a basis for jurisdiction (*see* Doc. 1 ¶ 2), Petitioner
25 does not clearly articulate any claim under the APA.

26 ³ Where a party “can only show that there are ‘serious questions going to the
27 merits’—a lesser showing than likelihood of success on the merits—then a preliminary
28 injunction may still issue if the ‘balance of hardships tips sharply in the [party]’s favor,
and the other two *Winter* factors are satisfied.” *Shell Offshore, Inc. v. Greenpeace, Inc.*,
709 F.3d 1281, 1291 (9th Cir. 2013) (quoting *Alliance for the Wild Rockies v. Cottrell*,
632 F.3d 1127, 1135 (9th Cir. 2011)). Under this serious questions variant of the *Winter*
test, “[t]he elements . . . must be balanced, so that a stronger showing of one element may
offset a weaker showing of another.” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir.
2012).

1 *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th
2 Cir. 2001). Where the movant seeks a mandatory injunction, rather than a prohibitory
3 injunction, injunctive relief is “subject to a heightened scrutiny and should not be issued
4 unless the facts and law clearly favor the moving party.” *Dahl v. HEM Pharms. Corp.*, 7
5 F.3d 1399, 1403 (9th Cir. 1993). *See Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir.
6 2017) (discussing when a preliminary injunction ordering a bond hearing before an IJ is
7 prohibitory, rather than mandatory, in nature).

8 In his Motion, Petitioner principally argues that ORR’s determination of his age
9 violated the TVPRA and Respondents unlawfully detained him in DHS custody because
10 he is a minor.⁴ He requests the Court order that: “(1) Respondents shall immediately
11 return L.B. from ICE’s adult prison to the Office of Refugee Resettlement.
12 Notwithstanding any logistical delays in transferring physical custody, L.B. shall be for
13 all other purposes considered as being in the custody of the Office of Refugee
14 Resettlement from the time of th[e] order; and (2) ICE is enjoined from applying or
15 considering the unlawful age redetermination of L.B., and thus preventing him from
16 securing his rights as an unaccompanied alien child including but not limited to eligibility
17 for: (a) Special Immigrant Juveniles Status under 8 U.S.C. § 1101(a)(27)(J); (b) initial
18 jurisdiction of his asylum claim with US Citizenship and Immigration Services (USCIS)
19 under § 1158(b)(3)(C); and, (c) placement in the least restrictive setting available on
20 L.B.’s eighteenth birthday including release on his own recognizance under §
21 1232(c)(2).”

22 **A. Likelihood of Success on the Merits**

23 In 2002, Congress enacted the Homeland Security Act (HSA), which transferred
24 responsibility to HHS for “‘coordinating and implementing the care and placement of
25 unaccompanied alien children,’ ‘ensuring that the best interests of the child are
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27 ⁴ Petitioner additionally argues in his motion that the age determination and his
28 resulting detention in DHS custody violates the *Flores* Agreement and the Prison Rape
Elimination Act (PREA). Because these legal theories have not been presented in the
Petition, the Court does not reach those arguments here.

1 considered in decisions and actions relating to the care and custody of an unaccompanied
2 alien child,’ ‘implementing policies with respect to the care and placement of
3 unaccompanied alien children,’ and identifying ‘a sufficient number of qualified
4 individuals, entities, and facilities to house’ such children.” *Flores v. Sessions*, 862 F.3d
5 863, 870 (2017) (quoting 6 U.S.C. § 279(b)(1)). In 2008, Congress enacted the TVPRA,
6 codified in relevant part at 8 U.S.C. § 1232, which further addressed the framework for
7 the care and custody of unaccompanied minors by HHS and DHS consistent with the
8 HSA.

9 In order to determine whether an alien is an UAC for purposes of the statute, the
10 TVPRA directs that “[HHS], in consultation with [DHS], shall develop procedures to
11 make a prompt determination of the age of an alien, which shall be used by [DHS] and
12 [HHS] for children in their respective custody. At a minimum, these procedures shall take
13 into account *multiple forms of evidence*, including the *non-exclusive* use of radiographs,
14 to determine the age of the unaccompanied alien.” 8 U.S.C. § 1232(b)(4) (emphasis
15 added).

16 Pursuant to the TVPRA, ORR developed an implementing guide summarizing
17 “ORR policies for the placement, release and care of unaccompanied alien children in
18 ORR custody.” See Section 1.6, ORR Children Entering the United States
19 Unaccompanied (Jan. 30, 2015) (“ORR Guide”).⁵ The ORR Guide provides, in relevant
20 part:

21 Each agency acknowledges the challenges in determining the
22 age of individuals in custody. These challenges include, but
are not limited to:

- 23 • Unavailable documentation;
- 24 • Contradictory or fraudulent identity documentation and/or
25 statements;
- 26 • Physical appearance of the individual; and
- 27 • Diminished capacity of the individual.

28 ⁵ See <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied> (last visited Oct. 26, 2018).

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The TVPRA requires the age determination procedures, at a minimum, to take into account multiple forms of evidence.

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Accordingly, under these procedures, each case must be evaluated carefully based on the totality of all available evidence, including the statement of the individual in question.

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ORR Guide § 1.6 (emphasis added).

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HHS may make age determinations of UAC when they are in HHS custody on a reasonable suspicion that a child in HHS custody is 18 years or older.

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In the event there is conflicting evidence regarding the age of an unaccompanied alien child in HHS custody, the HHS funded care provider case worker shall immediately notify the HHS Federal Field Specialist (FFS). The FFS will make the age determination based on his/her review of the multiple forms of evidence collected by the care provider. Until the age determination is made, the unaccompanied alien child is entitled to all services provided to UAC in HHS care and custody.

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ORR Guide § 1.6.1.

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Case managers should seek the following as evidence when conducting age determinations. Information from each category is not required.

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Documentation:

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- Official government-issued documents, including birth certificates...

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- Other reliable records (e.g., baptismal certificates, school records, medical records) that indicate the unaccompanied alien child's date of birth.

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Statements by individuals (including the unaccompanied alien child) determined to have personal knowledge of the unaccompanied alien child's age, and who HHS concludes can credibly attest to the age of the unaccompanied alien child:

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- Statements provided by the unaccompanied alien child regarding his or her age or birth date. (An unaccompanied alien child's uncorroborated declaration regarding age is not used as the sole basis for an age determination.)

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- Statements from the unaccompanied alien child's parent(s) or legal guardian(s), if such persons can be

1 identified and contacted.

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- Statements from other persons.
 - Information from another government agency (Federal, State, local or foreign)
 - State/local arrest records.
 - Child welfare agency records.

6 Medical Age Assessments:

7 Medical Age Assessments include both the use of imaging
8 technology, such as radiography, and physical examinations.
Regarding these assessments:

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- A medical professional experienced in age assessment method(s) must perform the examination, taking into account the individual's ethnic and genetic background.
 - Dental and skeletal (bone) maturity assessments using radiographs may be used to determine age, ***but only in conjunction with other evidence.***
 - As no current medical assessment method can determine an exact age, best practice relies on the estimated probability that an individual is 18 or older. The examining doctor must submit a written report indicating the probability percentage that the individual is a minor or an adult.

17 ORR Response to Medical Age Assessments:

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- The FFS supervisor must review the determination regarding the age submitted by the examining doctor.
 - If an individual's estimated probability of being 18 or older is 75 percent or greater according to a medical age assessment, ***and this evidence has been considered in conjunction with the totality of the evidence,*** ORR may refer the individual to DHS. The 75 percent probability threshold applies to all medical methods and approaches identified by the medical community as appropriate methods for assessing age.
 - The FFS compiles all pertinent information (e.g., how reasonable suspicion was raised that the subject is over 18, the information referenced, the individuals or agencies consulted, statements and conclusions) and documents it in a memorandum for review and approval by the FFS Supervisor.
 - The FFS then will forward the memo to the care provider facility case manager to be included in the unaccompanied alien child's case file and to the ICE Detention and

1 Removal Office (DRO) Field Office Juvenile Coordinator
2 (FOJC) for inclusion in the unaccompanied alien child's
3 A-file.

4 ... If the new information or evidence indicates that an
5 individual who is presumed to be an unaccompanied alien
6 child is actually an adult, then HHS will coordinate with the
7 assigned FOJC to immediately transfer the individual to an
8 adult DRO facility.

9 ORR Guide § 1.6.2 (emphasis added).

10 The Court finds that Petitioner has demonstrated a likelihood of success on the
11 merits of his claim that ORR's age determination in his case was invalid under the
12 TVPRA and its implementing policies. The record before this Court shows that ORR's
13 August 15, 2018 determination relied only on dental radiographic analysis and an ORR
14 official's behavioral observation to conclude that Petitioner was at least 18 years. To
15 make an age determination, however, the plain language of the TVPRA permits only the
16 non-exclusive use of radiographs in conjunction with other "forms of *evidence*."
17 Similarly, the ORR Guide provides that a dental radiograph assessment may only be used
18 to determine age in conjunction with "other *evidence*." There is no apparent plausible
19 construction of the TVPRA, or the ORR Guide, under which an ORR official's
20 nonspecific, unsubstantiated speculation of what they perceive to be adult behavior
21 suffices as "evidence" that may be considered and relied upon in making an age
22 determination. Indeed, ORR does not include appearance or behavior as criteria for
23 evaluating whether an individual is an adult or juvenile, but instead lists those factors as a
24 challenge to the age determination process.

25 In their response, Respondents contend "there is additional evidence that
26 Petitioner is already an adult. Petitioner was encountered by Mexican authorities on
27 December 11, 2017, at which time he used a date of birth of October 28, 1999. []
28 Petitioner was also detained by Panamanian immigration authorities with a date of birth
of June 10, 1994. []" (Doc. 10 at 7.) But Respondents offer no discussion concerning
the reliability of these records, nor is there any indication that the reviewing ORR official
knew of or considered them in making an age determination. Rather, because DHS was

1 aware of this conflicting information at the time it designated Petitioner as an UAC and
2 transferred him into ORR custody, these records appear to be questionable at best.

3 The Court finds that Petitioner has made a sufficient showing that ORR's age
4 determination was in contravention of the TVPRA. Respondents' transfer of Petitioner
5 from ORR custody to DHS custody based on that determination therefore is in
6 contravention of the TVPRA and the ORR Guide and does not authorize Petitioner's
7 continued detention in DHS custody. Because the Court concludes that Plaintiff is likely
8 to succeed on his claim that ORR's age determination in this instance was invalid, it does
9 not reach the viability of his claim that ORR's referral policy violates the TVPRA, or
10 Petitioner's remaining regulatory and constitutional claims.

11 **B. Likelihood of Irreparable Harm**

12 Petitioner asserts that he will suffer irreparable harm to his ability to seek
13 immigration relief in the absence of an injunction. Specifically, he contends that he will
14 lose his ability to pursue asylum and Special Immigrant Juvenile Status (SIJS). While a
15 loss of available immigration relief may constitute irreparable harm, *see, e.g., Beno v.*
16 *Shalala*, 30 F.3d 1057, 1063 n.10 (9th Cir. 1994), neither the Petition nor the Motion sets
17 forth any specific detail with regard to his pursuit of this relief or the requirements for
18 obtaining relief. As a result, the Court lacks any meaningful basis for determining the
19 impact that the age determination by ORR for purposes of custody will have on his
20 potential eligibility for any form of relief. Further, while DHS and other federal agencies
21 may seek to rely on ORR's age determination to adjudicate some application for benefits,
22 there is no indication that they would do so immediately or before a decision on the
23 merits of this case could be reached. Petitioner has not shown a likelihood of irreparable
24 harm absent a temporary restraining order on this basis.

25 However, the Court finds that Petitioner has shown a likelihood of imminent,
26 irreparable harm in the absence of an order enjoining his continued detention in DHS
27 custody. In absence of immediate relief, Petitioner will be prevented from being
28 considered for "placement in the least restrictive setting available," to which he would be

1 entitled as a minor reaching eighteen years of age while in ORR custody pursuant to 8
2 U.S.C. § 1232(c)(2)(B). (Doc. 2 at 14.) Respondents do not—and indeed cannot—
3 maintain an argument that detaining a minor in an adult facility, even for one day, does
4 not constitute harm.

5 **C. Public Interest and Balance of Equities**

6 Where the government is the opposing party, as here, the public interest and
7 balance of equities factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Public
8 interest favors the correct application of federal law. *Valle del Sol, Inc. v. Whiting*, 732
9 F.3d 1006, 1029 (9th Cir. 2013); *Small v. Avanti Health Sys., LLC*, 661 F.3d 1180, 1197
10 (9th Cir. 2011); *N.D. v. Haw. Dep't of Educ.*, 600 F.3d 1104, 1113 (9th Cir. 2010) (“[I]t
11 is obvious that compliance with the law is in the public interest.”). Because Petitioner
12 has met his burden to establish a strong likelihood of success on the merits of his claim
13 that Respondents have violated the TVPRA, the public interest and balance of equities
14 weigh in his favor.

15 **D. Bond**

16 “The court may issue a preliminary injunction or a temporary restraining order
17 only if the movant gives security in an amount that the court considers proper to pay the
18 costs and damages sustained by any party found to have been wrongfully enjoined or
19 restrained.” Fed. R. Civ. P. 65(c). The Ninth Circuit has “recognized that Rule 65(c)
20 invests the district court with discretion as to the amount of security required, if any.”
21 *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003) (internal quotation marks and
22 citation omitted). “The district court may dispense with the filing of a bond when it
23 concludes there is no realistic likelihood of harm to the defendant from enjoining his or
24 her conduct.” *Id.* Because the Court perceives no likelihood of resulting harm to
25 Respondents, the Court finds it appropriate to issue the TRO without requiring security.

26 **IV. Conclusion**

27 Petitioner has met his burden to show that there is a strong likelihood of success
28 on the merits of his habeas corpus claim that ORR’s determination of his age, and his

1 resulting transfer into DHS custody based on that determination, violates the TVPRA;
2 that, in the absence of a TRO transferring him into ORR custody, Petitioner would suffer
3 irreparable injury; and that the public interest and balance of equities tip in his favor.
4 ORR's age determination was made in violation of the TVPRA and the implementing
5 policies and is therefore invalid. In the absence of any valid alternate age determination,
6 at the present time, Petitioner's date of birth is deemed to be October 28, 2000. Thus, to
7 the extent that Petitioner requests that Respondents be ordered to transfer him from DHS
8 custody into the care and custody of ORR, the motion for a TRO will be granted. The
9 motion is otherwise denied.

10 **IT IS ORDERED:**

11 (1) Petitioner's Motion for Temporary Restraining (Doc. 2) **is granted in part**
12 **and denied in part** as set forth above.

13 (2) Respondents' age determination is rescinded and Respondents shall
14 immediately **release** L.B. from DHS custody into to the care and custody of ORR and
15 shall **transfer** Petitioner from the La Palma Correctional Center to an ORR juvenile
16 facility. L.B. shall be considered as within the custody of ORR as of the date this Order
17 is filed.

18 (3) Respondents must file a Notice with the Clerk of Court no later than
19 **4:00 p.m. on October 27, 2018** reflecting compliance with this Order.

20 (4) Petitioner shall have until **November 9, 2018** to file any amended petition
21 in accordance with Rule 15.1 of the Local Rules of Civil Procedure. Petitioner shall
22 confer with Respondents and advise them as to whether an amended petition will be filed
23 no later than **November 2, 2018**.

24 (5) If Petitioner elects not to file an amended petition, Respondents shall have
25 until **December 10, 2018** to file an answer to the Petition (Doc. 1). If Petitioner elects to
26 file an amended petition, Respondents must answer the amended petition within **30 days**
27 of the date the amended petition is filed.⁶ Respondents shall not file a dispositive motion

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⁶ Regarding courtesy copies of documents for chambers, Respondent is directed to


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in place of an answer without first showing cause as to why an answer is inadequate.

(6) Petitioner shall have **15 days** from the filing of Respondents' answer to file a reply.

Dated this 26th Day of October, 2018.



Honorable Diane J. Humetewa
United States District Judge

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review Section II(D) of the Court's Electronic Case Filing Administrative Policies and Procedures Manual, which requires that "a courtesy copy of the filing, referencing the specific document number, shall be printed directly from CM/ECF." CM/ECF Admin. Man. § II(D)(3) (emphasis added). See <http://www.azd.uscourts.gov/sites/default/files/documents/adm%20manual.pdf>.