IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

G.T.G.V. and I.R.D.A., Petitioners,	)	
	)	Case No. 25-cv-14700
v.	)	
KRISTI NOEM, Secretary, U.S. Department of Homeland Security; ANGIE SALAZAR, Acting Director of the Office Of Refugee Resettlement ROBERT F. KENNEDY, JR., Secretary of Health and Human Services; MARVENA TWIGG, President and Chief Executive Officer of the National Youth Advocate Program, Respondents.	)	

REPLY MEMORANDUM AND TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Respondents claim to care about the Petitioners' welfare, but they separate Petitioners from their parents simply because the parents lack domestic-identity documents, needlessly impairing Petitioners' welfare. This court should grant the petition and order Respondents to either apply the permissible reunification rules, or to release Petitioners to their parents' custody immediately.

I. Overview of Reply Argument

The Petitioners' right to release from federal custody to their parents is based on the Trafficking Victims Protection Reauthorization Act (TVPRA), 8 U.S.C.

§ 1232, its regulations, and the Fifth Amendment. At the core is the Petitioners' right to be placed "promptly" in the setting of their "best interest." *Id.* § 1232(c)(2). Promptly releasing children from the Office of Refugee Resettlement (ORR) to their parents is generally in their best interest. When detention of a child is not required either to secure "the child's timely appearance before immigration officials" or to ensure "the child's safety" or that of others, the Respondents "shall release a child from its custody without unnecessary delay ...." 45 C.F.R. § 410.1201. The Respondents have not alleged that releasing Petitioners to their parents, the first priority among potential custodians, *id.*, would endanger them or others, or impair immigration proceedings. Continued federal custody is therefore "unnecessary."

Respondents refuse to release Petitioners to their parents because, after the Respondents required that the parents furnish domestic-identity documents—a requirement the parents cannot meet—the parents withdrew their applications. But that new requirement is legally and constitutionally infirm. *See Angelica S. v. U.S. Dep't of Health & Human Servs.*, 786 F. Supp. 3d 158, 179 (D. D.C. 2025) (granting motion to preliminarily enjoin the domestic-identity requirement under the Administrative Procedure Act in a class-action suit). Respondents adopted this rule professedly out of a concern that foreign documents of identification can be faked and domestic *ones* cannot. But the Respondents do not believe this. As recounted more fully below, the government *expects* non-citizens to supply foreign-identity documents in other immigration-related contexts, like applications for permanent residency and asylum. The new rule is therefore not rational, and it needlessly

delays the placement of Petitioners into the setting of their best interest, their parents.

In opposing the Petitioner's release, Respondents make several unavailing arguments. First, they contend that the two Petitioners are misjoined and that they must exhaust their claims administratively. But joinder is proper—and even required—where as here the two claimants contend that the same policy prevents their release, and exhaustion is not required when, as here, it would be futile. On the merits, Respondents argue that they are prohibited from releasing the Petitioners and they lack heightened constitutional protection. But on the facts here, the TVPRA mandates the Petitioners' release, and even under the most deferential constitutional standard, continued custody is improper.

II. The Two Petitioners are Properly Joined

Rule 20 of the Federal Rules of Civil Procedure sets out a pair of modest conditions for permissive joinder. Two or more persons may join in an action as plaintiffs if "(A) they assert any right ... arising out of the same transaction...; and (B) any question of law or fact common to all plaintiffs will arise in the action." If plaintiffs satisfy these two criteria, the Seventh Circuit will reverse a district court's refusal to allow them to proceed in one suit. In particular, the Seventh Circuit held that Rule 20 was satisfied, and joinder was required, when 15 plaintiffs alleged that an employer used an impermissible criterion (race) to decide where to locate them (promoted or not). *Lee v. Cook County, Ill.*, 635 F.3d 969, 971 (7th Cir. 2011) (ruling that non-joinder in this situation is reversible). The same logic applies here. The

two Petitioners allege that the Respondents are using an impermissible criterion (domestic-identity documents) to decide whether to move them from federal custody to suitable potential sponsor like their parents.

In an attempt to evade this logic, Respondents offer three flawed arguments. First, they contend that the Petitioners arrived in the U.S. at different times, have different parents, and live at different facilities. But such differences are immaterial to the Petitioner's claim that the infirm domestic-document rule has unlawfully kept them in custody for over six months. *See* Ex. 1 (Affidavit of Michael Hoyt). Second, Respondents contend that the Petitioners' claims turn on more than just the unnecessary length of their custody. This is incorrect. Under 45 C.F.R. § 410.1201, Respondents "shall" release the Petitioners to their parents "without unnecessary delay" if release would not endanger them, the public, or immigration proceedings. For both Petitioners, the delay here is "unnecessary" because Respondents do not assert that release poses such dangers. The delay arises entirely from the rule—equally applicable to both Petitioners—requiring domestic-identity documents from their parents. Third, the Respondents argue that this suit serves no purpose in light of *Angelica S.*, the class-action suit that has preliminarily enjoined the domestic-identity requirement. As an initial matter, Respondents do not claim that Plaintiffs are within the *Angelica S.* class; they are plainly not, since that class is limited to children "who were in or transferred to the custody of HHS on or before April 22, 2025." *Angelica S.*, 786 F. Supp. 3d at 176. Moreover, *Angelica S.* is not a habeas petition and that Court likely cannot order release. The

reasoning of the *Angelica S.* injunction may offer some support for the Petitioners' claims, but only as persuasive authority.

Lastly, Respondents seek dismissal, rather than severance, of I.R.D.A.'s claim. If the plaintiffs were misjoined, which they are not, to achieve expeditious resolution and prevent further delay, severance would be preferable under Rule 21.

III. Administrative Exhaustion is Not Required Here.

Respondents' next threshold issue is exhaustion of administrative remedies, but no exhaustion is required in this case. To begin, Congress has not statutorily required the Petitioners to pursue in administrative proceedings the claims that they raise here. As a result, Respondents urge this court to use its discretion to impose such a requirement. Gov. Br. at 18. They argue that because the Petitioners' parents withdrew their sponsorship applications when it became apparent that they would fail the domestic-identity requirement, the parents should reapply, still without domestic-identity documents, just to see what might happen, even if it would lead to their removal and would preclude other sponsors from being considered.

As Respondents acknowledge, there is a "consistently recognized a futility exception to exhaustion requirements." *Carr v. Saul,* 593 U.S. 83, 93 (2021). Respondents assert that the Petitioners never argued futility; they are wrong. Petitioners explicitly stated in their Petition that "any administrative challenge to the ORR to the Respondents' new identification policies would be futile." *See Petition for a Writ of Habeas Corpus,* at ¶12. Petitioners recognize that the

Respondents' new rule grants the ORR discretion to waive the domestic-identification requirement on a case-by-case basis for a parent sponsor if waiver is supported by an unspecified "clear justification." But Respondents do not suggest that this unarticulated standard might be availing to the Petitioners or their parents. Nor could they. In the *Angelica S.* litigation, Respondents submitted a memo by Toby Biswas to Respondent Salazar, which proposes this standard. *See Angelica S. v. U.S. Dep't of Health & Human Servs.*, No. 25-cv-1405, Dkt. 21-4 (D.D.C. May 23, 2025) ("Biswas Memo," attached hereto). But the memo merely states that a request for a case-specific waiver of the domestic-document requirement must include "clear justification"; the memo does not define that standard. If the Respondents have not articulated to themselves what is a "clear justification" for a waiver, then a parent cannot realistically expect to divine it or satisfy it either. This court, therefore, should not exercise its discretion to require that Petitioners have their parents reapply in the vain hope of a waiver.

Moreover, Petitioners cited government statistics and alleged that under the new rules, reunification has slowed or stopped entirely. Memorandum in Support of Petition 7. The Respondents offer no dispute to these facts. Petitioner offers a further Affidavit to explain this point; Affiant Michael Hoyt explains that the 10 shelters in the Chicago area would normally lead to approximately 125 reunifications per month; but only one child was reunified since November, and that child did not require a waiver of the domestic ID requirement. Ex. 1. This confirms the futility of the acts Respondents seek to require.

Exhaustion of a sponsor's application ordinarily allows the ORR to determine whether a sponsor meets all the criteria for fulfilling the child's welfare before releasing the child to the sponsor. But as mentioned above, Respondents do not contend that the Petitioners' parents fail to meet these criteria; and prior to the creation of the new criteria, Petitioners' parents appeared headed toward approval; there was no reason to believe they would qualify for reunification. The Respondents, through their domestic-document rule, s*ee Angelica S.,* 786 F. Supp. 3d 158, 179 (D. D.C. 2025), created undue delay by (predictably) deterring the Petitioners' parents from pursuing their applications. This court should not reward that undue delay by requiring that Petitioners restart their applications while their children remain separated from them in federal custody. If Respondents harbor any as-yet unstated concerns about the parents, the TVPRA permits them to conduct a home study of them *after* release. *See* 8 U.S.C. § 1232(c)(3)(B).

IV. On The Merits, Release from Federal Custody is Mandated.

A. The Statutory Basis for Release.

In answer to Petitioners' argument that the TVPRA requires the Respondents to release Petitioners from custody. Respondents offer several meritless responses. First, quoting part of 8 U.S.C. § 1232(c)(3)(A), they contend that the TVPRA bars them from releasing the Petitioners to their parents until the Respondents have reached the conclusion that the parents are capable of "providing for the child's physical and mental well-being." Gov. Br. at 20-21. But they omit the

portion that follows their excerpt. That language permits upon release on terms that can be satisfied almost instantly: identity, parentage, and criminal history.

> Subject to the requirements of subparagraph (B), an unaccompanied alien child may not be placed with a person or entity unless the Secretary of Health and Human Services makes a determination that the proposed custodian is capable of providing for the child's physical and mental well-being. *Such determination shall, at a minimum, include verification of the custodian's identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child.* (emphasis added.)

8 U.S.C. § 1232(c)(3)(A).

The parents satisfy these three requirements. Respondents do not question parentage in this case (which was confirmed by DNA testing months ago). Nor do they contend, in light of the criminal background checks previously performed, that the parents have any history that risks harm to the Petitioners. All that is in dispute is the validity of the rule requiring that these parents submit domestic, rather than foreign, forms of their identification with their application to sponsor custody of their children. (It is not even clear if the Respondents genuinely doubt the parents' identity.) But § 1232(c)(3)(A) does not require a submission of domestic-identity documents as a condition of release.

Respondents next contend that Petitioners' attack on the domestic-identity requirement is an attack on the wisdom of a policy choice, not a legal attack. They are mistaken. Although the domestic-identity requirement is indeed poor policy, the requirement is legally infirm because it violates the TVPRA. It does so by preventing the Petitioners from being released "promptly," 8 U.S.C. § 1232(c)(2) and

without "unnecessary delay," 45 C.F.R. § 410.1200, 1201 to the setting that is "in their best interest," 8 U.S.C. § 1232—their parents, 45 C.F.R. § 410.1201. The delay is "unnecessary"; indeed, by enacting the domestic-document requirement, the Respondents effectively and needlessly forced the Petitioners' parents to withdraw their otherwise sufficient applications, thereby delaying release.

Next Respondents insist that the domestic-document rule and the delay it engendered was necessary for reasons supplied in the Biswas Memo. Gov. Br. at 10-11. That memo cites two concerns: the difficulty of consulting "certain" unnamed foreign states and an unspecified number of sponsors using "fraudulent foreign documents" with their applications. Here is the relevant excerpt:

> Historically, ORR's policies implementing the regulation, permit acceptance of a wide variety of identity documents, including many foreign issued documents. ORR has had difficulty authenticating foreign issued documents, especially in a timely manner, and is aware of reports of widespread fraud with the use of such documents. ORR has relied on foreign consulates and embassies, often liaising with the support of the Department of State, to authenticate documents issued outside the United States, a process complicated by international relations and the stability of certain foreign states. HHS' own internal investigations, have revealed documented cases of criminals who have used fraudulent foreign documents in support of *Sponsor Applications* where former UAC became victims of crimes by their sponsor, including incidents of trafficking and sexual assault and have resulted in prosecutions.

Biswas Memo at 3.

Under the terms of the TVPRA, which mandate that the Respondents release the Petitioners "promptly," these two concerns do not validate the overbroad requirement that the Respondents adopted. To begin, the concern about undue difficulty in validating documents with "certain" foreign states might justify

applying the domestic-document rule to those foreign states. But the Respondents have applied the policy globally. Further, they make no contention that Petitioners' country of origin, Honduras, is such as foreign state. And, as they admit, *see* Govt. Br. at 21, they "may consult with" any "consulate or embassy." *See* 45 C.F.R § 410.1202(b). But their new policy forbids verifying documents with any diplomatic office, including one from Honduras, no matter how reliable it is.

Moreover, the government's professed concern about counterfeit foreign documents does not withstand analysis. Parents of noncitizens will normally be themselves noncitizens. To obtain the sort of government documents required by the ORR, they would need to apply with USCIS, and to provide precisely the same documents that ORR no longer accepts. If the Petitioners' noncitizen parents applied for permanent residency, the government would require them to present precisely the same foreign-origin documents (foreign passport, birth certificates, etc.) that it refuses to allow the Petitioners' parents to use to sponsor their children. See USCIS, *Checklist of Required Initial Evidence* https://www.uscis.gov/forms/filing-guidance/checklist-of-required-initial-evidence-for-form-i-485-for-informational-purposes-only. Similarly, if a noncitizen parent applies for asylum, they must submit "some form of identification ... including any passport(s), other travel or identification documents." I-589 form instructions at 11. Thus, parents who qualify to seek such relief (e.g., who fear political persecution and thus may seek asylum) may use the same foreign documents deemed untrustworthy by ORR to obtain USCIS documents, which they can then use for

reunification. But parents who don't have a well-founded fear of persecution to seek asylum cannot use those foreign documents to obtain domestic documentation. If the foreign documents are unreliable, it is hard to see how USCIS documents based on them could transmute into reliable documents. If they are reliable enough for noncitizens seeking permanent residency and asylum, it is hard to see how they are not reliable enough for ORR.[1] Given how the immigration agency administers its applications, the requirement that the Petitioners' parents supply U.S.-based documents of identity is inconsistent, hypocritical, and unnecessary.

As Petitioners pointed out in their opening brief, the domestic-identity requirement also violates a specific regulatory presumption: Respondents shall adjudicate a sponsorship application with 10 days of submission *Id.* § 410.1205(b). Respondents protest that they cannot be blamed for violating this 10-day norm because the parent sponsors withdrew their applications. Gov. Br. at 22. But Respondents are responsible for the infirm—and now enjoined (as to others)—policy that predictably induced the parents to withdraw their applications.

B. The Constitutional Bases For Release

If the mandate of the TVPRA were not enough to warrant the release of the Petitioners to their parents, the substantive due process interests under the Fifth Amendment are. Respondents maintain that the fundamental rights to familial association enjoyed by citizens under due process, s*ee Troxel v. Granville,* 530 U.S.

[1] Similarly, various foreign documents are acceptable forms of identification for noncitizens seeking state documents. *See* Illinois Secretary of State Document Requirements to Obtain a Driver's License/State ID Card. Again, requiring a state-issued document, inherently based on foreign documents, adds nothing to the process but delay and higher hurdles.

57, 65 (2000); *Moore v. City of E. Cleveland,* 431 U.S. 494, 504 (1977); *Wisconsin v. Yoder,* 406 U.S. 205, 232 (1972); *Prince v. Massachusetts,* 321 U.S. 158, 166 (1944); *Pierce v. Society of Sisters,* 268 U.S. 510, 535 (1925), do not apply to noncitizens detained in removal proceedings. *See* Govt. Br. at 24 (citing *Reyna v. Hott,* 921 F.3d 204, 211 (4th Cir. 2019)). But the Petitioners are not in removal proceedings. And even if the Petitioners' detention were equivalent to removal proceedings, that does not mean that anything goes, no matter how arbitrary. When the government invades a non-fundamental liberty interest, it must still show that the invasion is rationally related to a legitimate government interest. *See Reno v. Flores,* 507 U.S. 292, 303 (1993); *see also Washington v. Glucksberg,* 521 U.S. 702, 728 (1997); *see also, e.g., Goodpaster v. City of Indianapolis,* 736 F.3d 1060, 1070–71 (7th Cir. 2013); *United States v. Moore,* 644 F.3d 553, 555–56 (7th Cir. 2011); *Greater Chicago Combine & Ctr., Inc. v. City of Chicago, Ill.,* 431 F.3d 1065, 1071 (7th Cir. 2005). This is similar to the deferential form of equal-protection review. *Wroblewski v. City of Washburn,* 965 F.2d 452, 458 (7th Cir. 1992).

Respondents flunk the "rational relations" test. They maintain, and Petitioners agree with them, that the government has a legitimate interest in the well-being of the Petitioners. Petitioners' parents do, too. But the granting the legitimate end, the means the Respondents have chosen to achieve that goal are so ill-suited as to suggest that Respondents' goal is something else. The putative means for protecting Petitioners is a domestic-identity requirement calculated to be nearly impossible for many noncitizen parents to meet, causing (needlessly, if not

intentionally) massive delays in release from custody. As explained above, the delays are needless because nothing suggests that Honduran diplomats are unreliable authenticators of Honduran identity documents, and no evidence shows that Honduran (or generally, foreign) documents of identity are more vulnerable to fraud than domestic ones.

Similarly, Petitioners have a valid claim to release based on the Respondents violation of the Petitioners' right to procedural due process. Respondents make the overbroad assertion that, in *Reno v. Flores,* the Supreme Court decided that minors under detention during removal proceedings do not have "a procedural due process claim." Govt. Br. at 23. To the contrary, *Reno* affirmed that "the Fifth Amendment entitles aliens to due process of law in deportation proceedings." *Reno,* 507 U.S. at 306 (citing *The Japanese Immigrant Case,* 189 U.S. 86, 100–101(1903)). Again, Petitioners are not in deportation proceedings, but in any case they are still entitled to procedural fairness. Under the balancing test of *Mathews v. Eldridge,* 424 U.S. 319, 332 (1976), the domestic-identity rule is indefensible: it produces so much delay and detention as to massively outweigh any putative added safety. Indeed, given the government's own reports about domestic-identity fraud, the government offers little reason to believe that the domestic-identity requirement produces any better custodial placements of children than verifiable foreign-identity papers.

Finally, and for similar reasons, Respondents have not adequately rebutted the Petitioners' claim that, as a matter of equal protection, the domestic-identity rule lacks a rational basis. Respondents' argument is that the government has a

legitimate interest in rooting out fraud in the identification of foreign nationals and it may validly use methods for doing so that it could not use with U.S. citizens. That assertion is beside the point. Even with non-citizens, the government may not use *arbitrary* means in the name of preventing fraud; the means must at least be rational. And given the government's requirement that non-citizens supply foreign-identification documents when applying for permanent residency and asylum, forbidding their use when non-citizens seek to sponsor their children is not rational. And using that retirement to compel the extended detention of minor children is doubly irrational and thus impermissible.

After over six months of separation from their parents in federal custody, this court should order the Respondents either to release the Petitioners to their parents now; or, at a minimum, to reconsider immediately the parents' applications for sponsorship without the requirement that they submit domestic-identity documents.

Conclusion

Petitioners respectfully request that this Court grant their request for a writ of habeas corpus and release them to their parents.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2026, I electronically filed the foregoing with the Clerk of the Court of the United States District Court for the Northern District of Illinois by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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