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

A.N.P.S, minor, by and through Next Friend of Kin, N.C.S.E. Petitioner, v. Angie SALAZAR, in her official capacity as Acting Director of the Office of Refugee Resettlement (ORR), Andrew GRADISON, in his official capacity as Acting Assistant Secretary for the Administration for Children and Families (ACF), Robert F. KENNEDY JR., in his official capacity as Secretary of the Department of Health and Human Services (HHS), Luis CASTRO, in his official capacity as Federal Field Specialist, Office of Refugee Resettlement, Antonio GONZALEZ, in his official capacity as the Federal Field Specialist Supervisor, Office of Refugee Resettlement, LaVerne MUIR WRAY in her official capacity as Director of Heartland Int. Children's RC Respondents.	**Case No.** 25-cv-14778 **Judge** Hon. Rowland

REPLY MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Petitioner is a minor child from Honduras who entered the U.S. and was susequently released from Respondent's custody on December 6, 2022. On February 1, 2023 Petitioner's mother transferred custody of Petitioner to N.C.S.E. through a legal document executed in

Honduras. From February 1, 2023 until November 7, 2025 Petitioner resided in Illinois including under the care and custody of N.C.S.E. On November 7, 2025 Petitioner was re-arrested and re-detained by Respondents. On November 20, 2025 the Circuit Court of Cook County appointed N.C.S.E. as guardian of Petitioner *nunc pro tunc* to February 1, 2023. Petitioner brought this action to challenge his unlawful re-detainment by Respondents and to seek his immediate released and return to his legal guardian, N.C.S.E.

I. Respondents Do Not Have the Authority to Re-Detain Petitioner

Respondents' authority to detain immigrant minor children stems from 6 U.S.C. § 279 and Section 235 of the TVPRA. Both 6 U.S.C. § 279 and Section 235 of the TVPRA grant Respondents the responsibility over the placement and care of Unaccompanied Minor Children (UAC). Specifically, 6 U.S.C. § 279(g) grants Respondents the authority to detain "a child who: (1) Has no lawful immigration status in the United States; (2) Has not attained 18 years of age; and (3) With respect to whom: (i) There is no parent or legal guardian in the United States; or (ii) No parent or legal guardian in the United States is available to provide care and physical custody". At issue is whether Petitioner is a UAC within the definition of 6 U.S.C. § 279(g). He is not.

First, prior to his re-arrest and re-detention, Petitioner had and continues to have a legal guardian. "Legal guardian means an individual who has been lawfully vested with the power, and charged with the duty of caring for, including managing the property, rights, and affairs of, a child or incapacitated adult by a court of competent jurisdiction, whether foreign or domestic." 45 CFR § 410. On February 1, 2023 the foreign jurisdiction of Honduras vested N.C.S.E. with the power and charged her with the duty of caring for Petitioner. *See* Dkt 15. On November 20, 2025 the Cook County Circuit Court recognized the power vested in N.C.S.E. by the laws of

Honduras and appointed N.C.S.E. as Petitioner's guardian *nunc pro tunc* to February 1, 2023. *See* Dkt 15. Courts "may issue *nunc pro tunc* orders, or 'now for then' orders, Black's Law Dictionary, at 1287, to 'reflect[] the reality of what already occurred, *Missouri* v. *Jenkins*, 495 U. S. 33, 49, 110 S. Ct. 1651, 109 L. Ed. 2d 31 (1990)." *Roman Catholic Archdiocese of San Juan v. Feliciano*, 589 U.S. 57, 65, 140 S. Ct. 696, 700-01 (2020). Therefore, at the time of his re-arrest, Petitioner was under a legal guardianship and Respondents did not have the authority to re-detain him. Respondents do not have the authority to continue to detain Petitioner.

Second, at the time of Petitioner's re-arrest and re-detention, Petitioner's legal guardian was providing care and physical custody to Petitioner. *See* Dkt 15. Respondents would have Petitioner go through the Sponsorship Application Process to be "placed" with N.C.S.E. pursuant to 45 C.F.R. § 410.1201(a), 1202(b). However, Petitioner does not seek to be "placed" with N.C.S.E. Instead, Petitioner was taken from N.C.S.E.'s custody and seeks to be returned to his court-appointed legal guardian. Respondents do not have the authority to re-detain Petitioner nor do they have the authority to "place" Petitioner with a person or entity pursuant to 45 C.F.R. § 410.1201(a), 1202(b).

II. Petitioners Re-Arrest and Re-Detention Violates the APA

On December 6, 2022, Petitioner was released from ORR custody. Prior to his re-arrest and re-detention, Petitioner resided in Illinois under the care and custody of N.C.S.E. Dkt 15. Respondents' decision to re-detain Petitioner constitutes a final agency action that is arbitrary and capricious and not in accordance with the law.

A "final agency action for which there is no other adequate remedy in a court [is] subject to judicial review." 5 U.S.C. § 704. The reviewing court "shall ... hold unlawful and set aside agency action, findings, and conclusions found to be ... arbitrary and capricious, an abuse of

discretion, or otherwise not in accordance with law," or "unsupported by substantial evidence." 5 U.S.C. §§ 706(2)(A), (E). "Any alternative remedy advanced by the [government] agency will not be adequate under §704 where the remedy offers only 'doubtful and limited relief'." *Lopez v. Sessions,* 2018 U.S. Dist. LEXIS 98712 at 17-18 (S.D.N.Y., June 2018) citing 487 U.S. 879, 901 (1988).

The re-arrest and re-detainment of Petitioner constitutes final agency action. "As to final agency action, the 'core question' is 'whether the agency has completed its decision making process, and whether the result of that process is one that will directly affect the parties'." *Id* at 19 citing *Lunney v. United States,* 319 F.3d 550, 554 (2d Cir. 2023) (quoting *Dalton v. Specter,* 511 U.S. 462, 470, (1994). Respondents have completed their decision making process to re-detain Petitioner, a decision which directly affects Petitioner's liberty interests.

The decision to re-arrest and re-detain Petitioner is arbitrary and capricious. Respondents have not produced any evidence to suggest that a deliberative process was undertaken to re-arrest and re-detain Petitioner other than issuance of a Form I-200 administrative arrest warrant which solely cites that Petitioner is in removal proceedings. Dkt 63. Petitioner has been in removal proceedings since December 27, 2022. *See* Exhibit 1 – a copy of the charging document, Notice to Appear, taken from Petitioner's administrative file, as maintained by the Executive Office of Immigration Review (EOIR). Furthermore, Respondents have not shown any changes in Petitioner's circumstances to warrant his re-detention. *See Saravia v. Sessions,* 280 F. Supp. 3d 1168, (N.D. Cal, 2017) ("Once a noncitizen has been released, the law prohibits federal agents from re-arresting him merely because he is subject to removal proceedings.").

The decision to re-detain Petitioner is not in accordance with the law. Petitioner has a legal guardian. Dkt 15. Respondents' authority to detain UACs is limited to minors as defined by

6 U.S.C. § 279(g). Therefore, Respondents' final agency action of re-detaining Petitioner is arbitrary and capricious, not in accordance with the law and violates the APA.

III. **Petitioners Re-Arrest and Re-Detention Violates Due Process**

When private interests will be affected by official government action, the court must consider the test set out in *Mathews v. Eldridge,* 424 U.S. 319 (1976). Petitioner's due process rights require consideration of: "(1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest through procedures used, and (3) the government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail." *Lopez* at 26-27 citing *Mathews* at 96.

First, Petitioner's interest in freedom from being detained by Respondents "lies at the heart of the liberty protected by the Due Process Clause." *Id* at 27 citing *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001). Second, "redetention [of a UAC], in the absence of any procedure or evidential findings, establishes the risk of erroneous deprivation of a liberty interest." *Id* at 28. "This risk extends to the broader community of UACs who are placed with sponsors and are rearrested without process." *Id* at 28 citing *Saravia v. Sessions,* 280 F. Supp. 3d 1168, (N.D. Cal, 2017).

Third, while Respondents have a legitimate interest to protect UACs from smugglers, traffickers, and others who may seek to victimize them, substitute procedures to determine if a child is under the jurisdiction of a state court by means of a legal guardianship is not administratively burdensome. Moreover, the authority to determine the best interests of a minor child is a power generally reserved to the States, not Respondents through the Tenth Amendment to the Constitution. Prior to his re-arrest and re-detention, Petitioner lived in the State of Illinois for over there (3) years. The Circuit Court of Cook County appointed N.C.S.E. as the legal

guardian of Petitioner finding that it was in Petitioner's best interest. 755 ILCS 5/11-5.5(a). Therefore, there is little administrative burden on Respondents to determine if a child meets the definition of a UAC under 6 U.S.C. § 279(g).

IV. Exhaustion of Remedies is Not Required and Would be Unconstitutional

There is no statutory requirement for exhaustion of remedies under Section 2241. Respondents' Sponsorship Application process is limited to those children that Congress vested Respondents with the responsibility for placement and care of – namely UACs as defined under 6 U.S.C. § 279(g). Congress expressly limited Respondents' authority to children as defined by 6 U.S.C. § 279(g). While parents of UACs as defined by § 279 must go through the administrative process of the Sponsorship Application, parents and legal guardians of children who are not UACs as defined by § 279 do not go through such a process. For example, parents who enter the U.S. with their children do not go through the Sponsor Application process.

Respondents' position amounts to family separation. ORR reported that the average length of detention in November 2025 fora UAC before being released was 185 days. *See https://acf.gov/orr/about/ucs/facts-and-data*. If Petitioner is required to spend months detained by Respondents while his legal guardian goes through the Sponsorship Application process, then immigration officials can remove any child throughout the United States from their parent/legal guardian if that child was previously released from ORR custody. The children will then have to wait an average of 185 days in ORR detention, separated from their parent/legal guardian, while Respondents investigate that same parent/legal guardian through the sponsorship process, for no articulable reason at all. Respondents re-detained Petitioner without a valid basis. Petitioner should not have to wait in ORR custody 185 days while Respondents initiate a frivolous investigation into Petitioner's court-appointed legal guardian.

V. This Court Has the Authority to Order Petitioner's Release

District courts have jurisdiction to grant writs of habeas corpus to petitioners who are held in the custody of the federal government in violation of the constitution, laws, or treaties of the United States. 28 U.S.C. § 2241. The "court shall summarily hear and determine the facts, and dispose of the matter as law and justice require." 28 U.S.C. § 2243. "Federal courts have 'broad discretion in conditioning a judgment granting habeas relief'." *Beltran v. Cardall,* 222 F. Supp. 3d 476, (E.D. Virginia, 2016) (ordering RMB to be released from ORR to Petitioner's care and custody) *citing Hilton v. Braunskill,* 481 U.S. 770, 775 (1987). Therefore, this Court has the authority to order Petitioner's immediate release from ORR custody.

Dated: December 15, 2025

Respectfully submitted,

/s/ Laura Smith
Attorney for Petitioner

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