UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

A.N.P.S., a 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), *et al.*, Respondents.	)	No. 25 C 14778 Judge Rowland

MOTION FOR VACATUR UNDER RULE 60(b)

Defendants, by their attorney, Andrew S. Boutros, United States Attorney for the Northern District of Illinois, respectfully move to vacatur of the court's prior opinion and order pursuant to Federal Rule of Civil Procedure 60(b) regarding the court's judgment, dated January 6, 2025, against the respondents in this matter. *See* Dkt. 25 (judgment); *see also* Dkt. 20 (opinion and order).[1]

By way of review, this was a habeas case where petitioner A.N.P.S. (a then-17-year-old citizen of Honduras), sought immediate release from government custody so that he could be placed in the custody of N.C.S.E. *See generally* Dkt. 1 ("Pet."). This was his preference because, on November 7, 2025, he was detained by U.S. Customs and Border Protection and, from there, was placed into a facility controlled by the Office of Refugee Resettlement ("ORR"), an office within the United States Department of Health and Human Services. Pet. ¶ 1. N.C.S.E.'s placement within ORR custody was necessary because, as a minor without parents in this country available to provide care and physical custody, he "was designated" as an unaccompanied alien

[1] Defendants' are moving for vacatur *today*, and not by the scheduled date previously entered by the court of June 15, 2026, due to how defendants' 60-day timeframe under Federal Rule of Appellate Procedure 4(a)(1)(B) is currently running after this court denied defendants' motion to reconsider the judgment under Federal Rule of Civil Procedure 59(e). *See* Dkt. 34.

child ("UAC") "and placed in the custody of" ORR." *Id.* at ¶ 18. By statute, ORR makes "placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status." 6 U.S.C. § 279(b)(1). And ORR also may not place a child with a potential sponsor until certain safety and suitability steps have been followed, such as completing a home study, which allows ORR to make "a determination that the proposed custodian is capable of providing for the child's physical and mental well-being." 8 U.S.C. § 1232(c)(3).

Rather than engage in the sponsorship process to deal with A.N.P.S.'s detention, N.C.S.E. went to "the Cook County Circuit Court" on November 20, 2025, to have N.C.S.E. "appointed . . . as legal guardian of the Petitioner *nunc pro tunc* to February 1, 2023." *Id.* at ¶ 21. But N.C.S.E. was not willing to even put forward a sponsorship application for ORR despite never having been approved or vetted previously. Such an application is important for ORR because applicable statutes and regulations make it responsible for the care, custody, and placement of UACs. *See, e.g.*, One Big Beautiful Bill Act, 139 Stat. 72, Pub. L. No. 119-21, title VIII, subtitle H, section 87001(c)(1) (2025) (defining "potential sponsor" as "an individual or entity *who applies* for the custody of an unaccompanied alien child" (emphasis added)). With no application before ORR from N.C.S.E. at all, ORR could not complete the steps to make the statutorily required suitability and safety determination required to release a UAC to N.C.S.E. as a sponsor.

Regardless of this problem, this court's opinion ruled against respondents and ordered that A.N.P.S. be released to N.C.S.E. within 48 hours. *See* Dkt. 20 at 18. And the court arrived at this result based on a heavily redacted exhibit provided by petitioner's counsel, as well as artful pleading in the petition. *See* Dkt. 15-2 (redacting *the entire* name of the sponsor); Pet. ¶ 18 (stating that "Petitioner was released from ORR custody *to his cousin* and resided in Illinois" in December 2022" and, in the very next sentence, noting that "[o]n or about February 1, 2023 Petitioner's biological mother signed and notarized a transfer of custody of Petitioner *to his cousin*, N.C.S.E." (emphases added)); *see also* Dkt. 20 at 2 & 14 (relying on petitioner's heavily redacted exhibit).

In other words, the parallel reference "to [A.N.P.S.'s] cousin" reads as if the petitioner had previously been released by ORR to N.C.S.E. But that conclusion was based on a misrepresentation. *See* Dkt. 27 (Respondents' Exhibit 3) (showing that ORR released the petitioner to O.A.M.P., not N.C.S.E., in late 2022).

This mismatch is significant because

> [w]hen evaluating a motion for vacatur under Rule 60(b), a court may relieve a party from final judgment for: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that could not have been discovered by due diligence in time to move for a new trial; (3) fraud, *misrepresentation*, or other misconduct by an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is *no longer equitable that the judgment should have prospective application*; or (6) any other reason justifying relief from the operation of the judgment.

Roor Int'l BV v. Mutual Traders, LLC, No. 19 C 5064, 2023 WL 2789325, at *3 (N.D. Ill. Apr. 5, 2023) (emphases added). Applying Rule 60(b) is appropriate here because this court's opinion was based on the erroneous factual representation "that N.C.S.E. was Petitioner's *sponsor* as approved by ORR at the time of his arrest." Dkt. 20 at 8 (emphasis in original). Indeed, the court's analysis repeatedly notes how "the heart of the case" is that the petitioner was previously released by ORR in 2022 to N.C.S.E. *Id.* at 11 ("The Court is dumbfounded that the government did not address this issue—the fact that Petitioner was previously released by ORR to N.C.S.E."); *see also id.* at 13 (noting how "*ORR already released Petitioner into N.C.S.E.'s custody over three years ago*" (emphasis in original)); *id.* at 14 ("Here, the Court has good news: Respondents *already identified* N.C.S.E. as a suitable sponsor for Petitioner." (emphasis in original)).

As alluded to above, the reason that respondents did not address "this issue," *id.* at 11, is because petitioner had *never been released by ORR to N.C.S.E.*, Exhibit 3. Petitioner was instead released to someone else whose life apparently moved on. *Id.* This distinction means that this court ordered petitioner to be released to someone whom ORR was never able to vet as required

by law. *See* Dkt. 17 at 2–7. And that was based on the misrepresentation (intentional or not) that N.C.S.E. had previously been vetted by ORR. Dkt. 15-2; Pet. ¶ 18.

ORR previously released A.N.P.S. to O.A.M.P. because *he* had been vetted as a suitable sponsor, not someone else. And certainly not N.C.S.E.—whose only vetting ostensibly occurred from the local government and not the federal agency Congress tasked with that responsibility. ORR's decision not to release A.N.P.S. to someone who refused to even fill out a sponsorship application with the agency, and thus whom ORR had no opportunity to vet to determine whether he was capable of providing for the UAC's physical and mental well-being, was a valid exercise of its statutory authority. Respondents believe that under Rule 60(b), it is neither just nor equitable to hold ORR to a judgment that was based on a misrepresentation.

Finally, although this case is now indisputably moot given that A.N.P.S. has turned 18 years old, that development only provides another reason for this court's erroneous opinion and order of December 22, 2025, along with the corresponding judgment, to be vacated under Rule 60(b). *See Chi. Headline Club v. Noem*, 168 F.4th 1033, 1039–40 (7th Cir. 2026) (discussing vacatur of prior opinions through the doctrine from *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950), particularly when a case becomes moot later in a litigation); *see also Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 5 (2023) ("Our *Munsingwear* practice is well settled."); *Bashkin v. Keisler*, No. 06 C 2518, 2008 WL 4866352, at *3–4 (N.D. Ill. June 13, 2008) (noting how district courts have a similar power to vacate prior opinions and judgments derived from Rule 60(b).

Conclusion

Based on the foregoing, the court should vacate both its judgment against respondents, as well as its opinion and order of December 22, 2025.

Respectfully submitted,

ANDREW S. BOUTROS
United States Attorney

By: s/ Joshua S. Press

JOSHUA S. PRESS
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 886-7625
joshua.press@usdoj.gov