

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

E.H.C.F., a Minor, by his next friend,	:	
MILEIDY YAMALY CONTRERAS	:	
FLORES,	:	
Petitioner	:	
v.	:	Case No.: 3:25-cv-2142 (OAW)
UNITED STATES DEPARTMENT OF	:	
HEALTH AND HUMAN SERVICES,	:	
ET AL,	:	
Respondents	:	

**SUPPLEMENTAL BRIEFING IN
RESPONSE TO ECF NO. 43**

On January 14, 2026, the Court requested the parties to submit supplemental briefing to address the issue of “whether, under the Homeland Security Act [“HSA”] and the Trafficking Victims Protection Reauthorization Act [“TVPRA”], Petitioner [] is properly classified as an unaccompanied alien child (“UAC”), and whether the Office of Refugee Resettlement thus has the authority to hold him in their custody and adjudicate his placement.” ECF No. 43. In his briefing filed in support of his Motion for Preliminary Injunction, Petitioner never claimed that he was improperly designated as a UAC and, made this claim, for the first time, in response to the Court’s question. Respondents submit that Petitioner was properly deemed a UAC under the HSA and TVPRA.

The HSA defines a UAC as “a child who—(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) 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.” 6 U.S.C. § 279(g)(2). Pursuant to the TVPRA, “any department or agency of the Federal Government that has an unaccompanied alien child in

custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours **after determining that such child is an unaccompanied alien child.**” 8 U.S.C. § 1232(b)(3) (emphasis added). As the TVPRA makes clear, the determination that a child is a UAC is made by another department or agency of the Federal Government prior to the UAC’s transfer to ORR custody. *See* 8 U.S.C. § 1232(b)(3) and Declaration of Toby Biswas, Assistant Deputy Director for Policy for the Unaccompanied Alien Children Bureau, Office of Refugee Resettlement, attached hereto as Exhibit A at ¶ 6.

ORR must accept referrals of unaccompanied children, from any department or agency of the Federal Government at any time of day, every day of the year. 45 C.F.R. § 410.1101(a) (ORR “**shall** accept referrals ...”) (emphasis added). ORR has no ability to refuse a referral when the referring federal agency transfers custody to it of an individual that other agency has determined to be a UAC. *See generally* 8 U.S.C. § 1232(b), Exhibit A at ¶ 8. While “ORR may seek clarification about the information provided by the referring agency as needed,” regulation does not provide ORR the ability to refuse a referral or demand the referring agency change the child’s designation as a UAC. 45 C.F.R. § 410.1101(a); 8 U.S.C. § 1232(b); Exhibit A at ¶ 9. In other words, once a child has been referred, ORR cannot change the child’s classification and release him to a proposed custodian without completing its determination. That is the case even if a willing parent is identified after referral of the child as a UAC.

ORR’s role in this process is, therefore, custodial and not adjudicatory. ORR must also balance its responsibility to make prompt and continuous efforts towards release of UACs, *see* 45 C.F.R. § 410.1203(a), with concurrent duties to ensure the safety of releases. The TVPRA prohibits HHS from releasing a child to a proposed custodian unless HHS first “makes a determination that the proposed custodian is capable of providing for the child’s physical and

mental well-being,” which “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.” 8 U.S.C. § 1232(c)(3)(A); Exhibit A at ¶ 11.

In this case, ORR’s records indicate that the Department of Homeland Security (“DHS”), Enforcement and Removal Operations (“ERO”) advised Petitioner’s mother, Ms. Flores, to report to ERO on May 9, 2025, at 8:00 a.m. *See* Exhibit A at ¶ 15. Ms. Flores failed to appear. *Id.* The record goes on to say that “[Ms. Flores] is unable to locate or contact a [sic] this time.” *Id.* Therefore, Petitioner was admitted to ORR care on May 11, 2025. *Id.* At the time of his initial placement, ORR began its normal sponsorship verification processes to process him for release to a viable sponsor. *Id.*

When the Department of Homeland Security detains a minor criminal alien, DHS must make a determination as to whether the minor is an accompanied child or an unaccompanied child. 8 C.F.R. § 236.3. If DHS determines that the minor is accompanied, his/her custody and transfer is guided by 8 C.F.R. § 236.3(e): *Transfer of minors who are not UACs from one facility to another.* Those not meeting the requirement for secure detention, as defined in 8 C.F.R. § 236.3(i)(1), must be transferred to a licensed facility within three days, if there is one in the district, or within five days in all other cases. Alternatively, DHS ERO can agree to release the minor to a parent. *See* 8 C.F.R. § 236.3(j)(3) (“If a minor who is not a UAC is subject to pending removal proceedings under section 240 of the Act, DHS will consider whether to release the minor pursuant to section 212(d)(5) or section 236(a)...”). If a parent is available to provide care and physical custody, DHS will attempt to release the minor to that parent. *See* 8 C.F.R. § 236.3(j)(5)(i). The decision of DHS whether or not to release a minor who is not a UAC to an adult relative other than a parent

or a legal guardian is within their “unreviewable discretion.” *Id.*

If DHS determines that the minor is a UAC, it must notify the Department of Health and Human Services (“HHS”) within 48 hours about the apprehension of the UAC and any claim or suspicion the agency has that the alien in custody is under 18 years of age. 8 U.S.C. § 1232(b)(2). DHS must transfer a UAC to the custody of the HHS “not later than 72 hours after determining that such child is an unaccompanied alien child.” 8 U.S.C. § 1232(b)(3).

On May 8, 2025, Petitioner was taken into custody by the DHS ERO after it received notice from the Chelsea Police Department that Petitioner had been criminally arrested. Following his arrest, Immigration and Customs Enforcement (“ICE”) elected to detain the Petitioner, and in accordance 8 C.F.R. § 236.3, began an analysis of whether he was legally considered a minor or an unaccompanied alien child as part of the processing and detention decision. *See* Declaration of Karen E. O’Donnell, Supervisory Detention and Deportation Officer, attached hereto as Exhibit B at ¶ 10.

That same day, ICE ERO began the process of considering whether the Petitioner could be housed in a licensed ICE juvenile detention facility pursuant to Paragraph 21 of the Flores Settlement Agreement. Exhibit B at ¶ 13. Since Petitioner’s father was also in ICE custody, ICE ERO Juvenile and Family Management Division Unit Chief Byoung C. Park advised ICE ERO Harford to try and contact Ms. Flores, and if she was not reachable or did not respond, the Petitioner would be classified as a UAC. Exhibit B at ¶¶ 14-15.

On May 8, 2025, ICE ERO contacted Ms. Flores to see if she would agree to take custody and care of the minor if DHS ERO agreed to release him. *See* Exhibit B at ¶ 16. Ms. Flores indicated that she would take custody and care of Petitioner. Exhibit B at ¶ 16. Ms. Flores was told to report to ICE ERO on May 9, 2025, by 8:00 a.m. Exhibit B at ¶ 21(e). Ms. Flores did not

appear on May 9, 2025. Exhibit B at ¶ 18.

After the Preliminary Injunction hearing held on January 15, 2026, and in an effort to address the question posed by the Court, ICE ERO reviewed further information contained in the ICE ERO databases. In this search, the Respondents learned that, on May 9, 2025, Unit Chief Park confirmed that, if Ms. Flores did not want to come to ICE, then the Petitioner should be referred to ORR as a UAC. Exhibit B at ¶ 19. Unit Chief Park also advised that, if neither parent had legal status, then Petitioner should be referred to ORR as a UAC. *Id.*

On May 9, 2025, ICE ERO Boston confirmed that both of Petitioner's parents are subject to ICE detention. Exhibit B at ¶ 20. At that time, Petitioner was designated as a UAC and referred to ORR. Exhibit B at ¶ 21.

Pursuant to its statutory and regulatory obligations, DHS had no choice but to declare Petitioner a UAC. *Id.* Petitioner was transferred to the custody of ORR on May 11, 2025.

Respectfully Submitted,

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/s/

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CERTIFICATION OF SERVICE

I hereby certify that on January 16, 2026, a copy of the foregoing Notice was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/

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