

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

E.H.C.F., a minor, by and through his Next Friend,
MILEIDY YAMALY CONTRERAS FLORES,

Petitioners/Plaintiffs,

v.

Robert F. KENNEDY, JR. in his official capacity
as Secretary of Health and Human Services; Angie
SALAZAR, in her official capacity as Acting
Director of the Office for Refugee Resettlement;
Kristi NOEM in her official capacity as Secretary
of Homeland Security; Regina MOLLER, Director
of Noank Community Support Services; U.S.
Department of Health and Human Services (HHS);
U.S. Office of Refugee Resettlement (ORR); U.S.
Department of Homeland Security (DHS); Noank
Community Support Services (NCSS)

Respondents/Defendants.

Civil Case No.: 3:25-cv-02142 (VDO)

**PETITIONER-PLAINTIFF'S SUPPLEMENTAL BRIEF REGARDING HIS
CLASSIFICATION AS AN UNACCOMPANEID ALIEN CHILD ("UAC")**

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INTRODUCTION

Petitioner-Plaintiff is not currently, and likely was never, correctly classified as an Unaccompanied Alien Child (“UAC” or “UC”) pursuant to the Homeland Security Act (“HSA”). The Office of Refugee Resettlement (“ORR”) therefore has no authority to continue to detain him and he should be released immediately to the custody of his mother.

ARGUMENT

I. ORR HAS NO AUTHORITY TO CONTINUE TO DETAIN PETITIONER BECAUSE HE IS NOT AN UNACCOMPANIED ALIEN CHILD

Petitioner is not properly classified as a UC because he has not one, but two parents in the United States who are available to provide care and physical custody – his mother, Ms. Contreras Flores, and his father, Mr. Contreras Romero. Pursuant to the HSA, a UC is defined 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)(a). It is undisputed that Petitioner has no lawful immigration status and that he has not attained 18 years of age. The sole question is whether he has a “parent or legal guardian in the United States” who is “available to provide care and physical custody.” *Id.* The record demonstrates that he does.

The meaning of the term “available” is a matter of statutory interpretation. “Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.” *United States v. Kozeny*, 541 F.3d 166, 171 (2d Cir. 2008) (internal quotation marks omitted). Under the plain

meaning of the statutory text, “available” means “present or ready for immediate use.”¹ This plain meaning is consonant with the statutory purpose of § 279(g)(a), which is “concerned with whether a child [is] accompanied in the sense of having a parent in the territory of the United States, and not accompanied in the sense of having a parent holding the child’s hand at all times.” *Maldonado v. Lloyd*, 2018 WL 2089348 at *5 (S.D.N.Y. 2018) (quoting *D.B. v. Cardall*, 826 F.3d 721, 747 (4th Cir. 2016) (Floyd, J., dissenting). “Accordingly, a child is not ‘unaccompanied’ - and, therefore, neither a UAC nor properly within ORR’s regulatory ambit - if a parent is physically present in the United States and, as a practical matter, is available to provide care and physical custody.” *Id.* This interpretation “comports with the significant procedural safeguards that traditionally accompany attempts by the Government to intervene in the relationship between a parent and child.” *Id.* (citing *Stanley v. Illinois*, 405 U.S. 645, 658 (1972)).²

Here, the record demonstrates that Petitioner is not unaccompanied under the plain meaning of the statute. Both of Petitioner’s parents, Ms. Contreras Flores and Mr. Contreras Romero, live within the territory of the United States, specifically in Chelsea, Massachusetts. *See* ECF 39, Declaration of Ms. Contreras Flores. Additionally, since at least May 26, 2025, the date Petitioner’s mother submitted her corrected sponsorship application, she has “unambiguously communicated her desire to reunite” with Petitioner. *Maldonado*, 2018 WL 2089348 at *5. *See* ECF 25, Resp. Opp., at p. 12; ECF 39. Moreover, since at least September 15, 2025, ORR has been aware of the presence of Petitioner’s father in the household, confirming his availability “as a practical matter” to provide care and physical custody. *Maldonado* at *5. *See* ECF 25 at p. 14.

¹ *Available*, Merriam-Webster.com Dictionary, (Jan. 10, 2026), <https://www.merriam-webster.com/dictionary/available> (last accessed Jan. 16, 2026).

² This reading of the statute also comports with the fact that most children arriving at the border with a parent are not considered “unaccompanied” until the parents’ fitness is investigated. *See Maldonado*, 2018 WL 2089348 at *6.

As Petitioner has at least one parent who is present in the United States and available to provide care and custody, he is not an unaccompanied child and ORR has no statutory basis to continue to detain him. *See* 8 U.S.C. § 1232(b)(1) (vesting the Department of Health and Human Services, which is the parent agency of ORR, with the responsibility for “the care and custody of all *unaccompanied* alien children.”)

To the extent that Respondents argue that the initial designation of a child as a UC by the Department of Homeland Security (“DHS”) cannot later be challenged, such a contention ignores the central question presented in Petitioner’s habeas petition: “whether [his] *current* detention complies with federal statutes and the Constitution.” *D.B. v. Cardall*, 826 F.3d at 731, fn. 10. *See Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (internal quotation marks omitted) (observing that it is “uncontroversial” that such claims are cognizable in habeas corpus proceedings); *see also Jose L.P. v. Whitaker*, 431 F. Supp. 3d 540 (D.N.J. 2019) (“Neither party points to any authority establishing that UAC status is fixed and irrevocable, or determined solely at the moment of entry. The obvious humane purpose of § 1232 is to provide a backstop for the needs of a child who lacks a parent or guardian in the United States.”) Indeed, several federal courts have already ordered immediate release on the basis that a child in ORR custody is not properly classified as a UC. *See Souza v. Sessions*, 2018 WL 10436697 at *1 (N.D. Ill. 2018) (“[A]s a matter of statutory interpretation where the parent’s fitness is not disputed, it is reasonably likely that [child] no longer falls under § 279(g)(2)”); *Maldonado*, 2018 WL 2089348; Order Granting TRO, *E.A.G. v. Negash, et. al.*, No. 4:25-CV-5526 (Nov. 21, 2025), ECF 9 (“E.A.G. is not an unaccompanied minor. Plaintiffs-Petitioners have established a substantial likelihood of success on the merits because there is an insufficient basis to continue to detain E.A.G...”)

Petitioner further asserts that it is questionable whether Petitioner was ever properly classified as a UC. Respondents represent an internally contradictory narrative of his designation, stating that his mother “could not be located or contacted at the time,” while also stating that she “failed to report to ERO at the requested time on May 9, 2025.” ECF 25 at p.5, fn. 2. Respondents have not produced a log of phone calls, text messages, or voicemails to that effect. Moreover, according to the Declaration of Supervisory Detention and Deportation Officer Karen F. O’Donnell, submitted by the Respondents, there is no record of anyone at DHS instructing Ms. Contreras Flores to pick up her child. ECF 50-2. The only record of any communication from DHS to Ms. Contreras Flores relating to the detention of Petitioner provides, “DO Antonopoulos contacted the petitioner’s mother and she stated that if he was released he would remain in her care.” *Id.* at ¶ 16. For her part, Ms. Contreras Flores has submitted a declaration stating that she did receive a phone call from someone on May 9, 2025 telling her that Petitioner was detained at Burlington, but did not receive any instruction to pick him up. ECF 39 at ¶ 13. The next she heard about the whereabouts of her son was after he was already in ORR custody in Texas. *Id.* at ¶ 15. Moreover, ORR’s own record provides that Petitioner was “unable to contact his mother since the day of [his] arrest” because he “[did] not remember his mother’s phone number” and “ICE confiscated his phone and did not return it.” ECF 32, Ex. A. Given the above facts, it is very likely that Petitioner was erroneously classified as a UC at the outset, and that Respondents did not do their due diligence to locate and communicate with his available parent.

Further, at oral arguments on January 16, 2026, Respondents contended that DHS did not have authority to continue to detain Petitioner for more than 72 hours, and therefore were required to classify him as unaccompanied. But the TVPRA carves out an exception for “exceptional circumstances,” which allows DHS to retain custody of a child for a longer period

of time. 8 U.S.C. § 1232 (b)(3). To the extent Respondents truly could not locate Ms. Contreras Flores, the fact that Petitioner been living in the interior with both parents for six years prior should have qualified as an “exceptional circumstance” necessitating additional investigation.

Finally, and disturbingly, Respondents claim that minor children may be susceptible to classification as UCs simply because their parents do not have lawful immigration status and may be detained by ICE. ECF 50 at ¶ 5. Such an assertion flies in the face of the statute. The HSA does not make any reference to a parent’s immigration status as part of the definition of “available,” and for good reason. Respondents’ proposed rule would render thousands of children currently living with their parents “unaccompanied” in the eyes of the government. Moreover, nothing in the HSA or TVPRA authorizes ORR to inquire into immigration status as a condition for sponsorship. *See also* ORR Unaccompanied Alien Children Bureau Policy Guide, § 2.6. (“ORR does not disqualify potential sponsors based solely on their immigration status or for law enforcement purposes.”) If ORR is prohibited from denying a sponsorship application, which includes extensive vetting for sponsorship suitability, based solely on immigration status, then DHS certainly may not render a parent “unavailable” solely by virtue of immigration status.

II. THE PROPER REMEDY IS IMMEDIATE RELEASE OF PETITIONER TO THE CUSTODY OF HIS MOTHER

As Petitioner is not a UC, this Court should order that he be released immediately to the custody of his mother. On this basis alone, he is likely to succeed on the merits of his claim that his in detained in violation of the laws and Constitution of the United States, *see* ECF 1, Petition for Writ of Habeas Corpus, and Petitioner has already demonstrated that he will continue to suffer irreparable harm if he continues to be detained by ORR; that the balance of equities tips in his favor; and that an injunction is in the public interest. ECF 6, 30.

Dated: January 16, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 16, 2026, I electronically filed the foregoing document(s) and that they are available for viewing and downloading from the Court's CM/ECF system, and that the participants in the case that are registered CM/ECF users will be served electronically by the CM/ECF system. I further certify that a copy of the foregoing document(s) was mailed via U.S. Mail to the person(s) and entities listed below:

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