UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

M.S., a minor by his Next Friend, C.S., *Petitioner,*	:	CIVIL NO. 3:25-CV-2170-(VDO)
v.	:	
ANGIE SALAZAR, ET AL. *Respondents.*	:	JANUARY 19, 2026

PETITIONER'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR EXPEDITED DISCOVERY

Petitioner respectfully submits this Reply Memorandum pursuant to Local Rule 7(d) to specifically address certain factual inaccuracies, and to demonstrate to the Court that Respondents' Opposition Memorandum contains significant admissions against interest that compel discovery in this matter and require the granting of Petitioner's Motion for Expedited Discovery. In general, Respondents mischaracterize the instant action as an APA appeal, and essentially tell the Petitioner, "Trust us," we will supply, in due course, a Certified Administrative Record ("CAR"), and that is all Petitioner needs to know. Indeed, they argue that not even the Court can know about the inner-workings of ORR or how and why they have unconstitutionally delayed and detained a thirteen-year-old child, causing him extreme emotional harm.[1]

Respondents Are Incorrect About The Facts

Petitioner denies the assertions made at p. 8 and again at p. 13 of Respondents' Opposition that D.S. allegedly "submitted a false birth certificate for M.S., which identified Ms. Stenor as M.S.'s mother." Respondents cite to the Petition (ECF No. 1 at ¶ 30) for this allegation, but they fail to read the entire paragraph 30, which states in relevant part, "*Unbeknownst to the family*, Petitioner's birth

[1] "When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir. 1984) (quoting 11 C. Wright & A. Miller, Federal Practice and Procedure, § 2948, at 440 (1973).

certificate incorrectly listed C.S. and D.S. as the biological parents of both Petitioner and his sisters." Further, there is no evidence whatsoever in the record that D.S. supplied the birth certificate to ORR. In fact, when D.S. was first questioned about the birth certificate that apparently the Petitioner was carrying with him when he entered ORR custody on September 27, 2024, three days later "On September 30, 2024, during a call between NLFFA and D.S., D.S. disclosed that Petitioner's biological mother, Rossita, passed away when Petitioner was three months old. D.S. did not, at any point, claim that C.S. was Petitioner's biological mother." Petition, ECF No. 1 at ¶ 33.[2]

Petitioner absolutely needs discovery in this matter as ORR has not even produced at any time a copy of the so-called "fraudulent document." In fact, their Opposition screams out for transparency and admits that there are fundamental due process violations have occurred in this case. Although they rely on a so-called "Policy Guide" cited at Opposition at 6, n. 5,[3] the Guide itself, even if it were lawful, which Petitioner does not concede, does not permit denial of C.S. as a sponsor in this case. The Respondents appear to rely on a provision that states "ORR may deny release to a Category 1 potential sponsor and will deny release to a Category 2 or Category 3 potential sponsor, if any one of the following conditions exists...Has *knowingly* provided false information, committed perjury, or submitted fraudulent documentation during the sponsor assessment process;" (emphasis added).

Here, Petitioner can irrefutably prove that 1) no potential sponsor provided any false information; 2) even if the birth certificate is attributed to D.S., at the time he did not *knowingly* provide any false information nor submit fraudulent documentation. To the contrary, when asked about the birth

[2] Moreover, the reason for denial of C.S. given to Attorney Reagan was not that any documents were fraudulent, but rather there were "unmitigated concerns regarding fraudulent documents" without even identifying which documents were allegedly fraudulent or what were the specific concerns. ECF No. 1, ¶ 69. Petitioner presumes this relates to the birth certificate listing D.S and C.S on Petitioner's birth certificate but that has never been confirmed by ORR. This is precisely why discovery is necessary.

[3] *See* ORR Unaccompanied Alien Children Bureau Policy Guide, *available at* https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide. (last visited Jan. 18, 2026).

certificate that ORR had it its possession, he readily and honestly admitted that C.S. was not the birth mother; and 3) at the time this had occurred, in September of 2024, D.S had not yet undergone DNA testing and he believed, as he had for the entire lifetime of the Petitioner, that he was the biological father of the Petitioner.

Moreover, in another shocking lack of transparency, ORR never informed D.S. that there was a problem with the birth certificate and essentially pressured him to withdraw his application. From the time C.S. began her sponsorship applications, for all three of her children, in January 2025, she similarly was not told of any claim of "fraud" related to the birth certificate that ORR had first received from the Petitioner, (not D.S.), on or about September 27, 2024. The alleged "fraud" is in no way connected to C.S and it was not sufficient to deny release of N.F.S and D.F.S to C.S on April 1, 2025.

Petitioner has none of the records of ORR related to these decisions, and discovery is needed, in part, to determine whether there is any rational basis for distinguishing between Category 1 and Category 3 treatment of C.S with respect to her three children who had been held in ORR custody. These arbitrary policies set forth in the Policy Guide violate both procedural and substantive due process rights and Petitioner is entitled to discovery to determine if there is any basis related to the key criteria of ensuring the protection of Petitioner from human traffickers and releasing him only to sponsors, such as C.S., who is capable of protecting Petitioner's well-being. 45 C.F.R. § 410.1003. See Opposition at 6. It is precisely the blanket and mandatory denial policy in the Policy Guide that is unlawful, as it is contrary to law and ignores the plain language of the statute that ORR must make an individualized determination "on a case-by-case basis." 8 U.S.C.S. § 1232 (a)(2)(A). There must be:

> 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.

8 U.S.C.S. § 1232 (c)(3)(A). Obviously, Petitioner is entitled to discovery to see that determination as it relates to his sisters N.F.S and D.F.S. as well, and he should not be compelled to wait weeks and weeks for ORR to assemble a "CAR" that Petitioner has no knowledge of and which he will see for the first time, when it is filed with the Court. This is the epitome of denial of due process and would reward Respondents for playing this game of hide-and-seek, denying Petitioner the very records that would prove that C.S. has been found by ORR to be capable of protecting Petitioner's well-being. 45 C.F.R. § 410.1003.

Moreover, Respondents assert that "the Agency will produce an administrative record. The case can and will be adjudicated on that record. Petitioners' request for discovery predating production of the CAR is premature and should be denied on this basis alone." Opposition at 12. Respondents utterly fail to say when they will produce a CAR nor do they even hint what they might include in it. Respondents make no effort at being transparent as to the various practices and procedures they presumably employed in reaching their decision and seek to produce a carefully curated record, obviously designed to show they followed proper procedures. This is no more than an attempt to engage in trial by ambush. "Courts abhor a trial by ambush. *See Ginns v. Towle*, 361 F.2d 798, 801 (2d Cir. 1966) ('The basic purpose of the federal rules, particularly those concerning discovery and disclosure, is to eliminate trial by ambush[.]')." *Vijayanagar v. Krishna*, No. 3:18-CV-00553 (KAD), 2021 U.S. Dist. LEXIS 158608, at *15 (D. Conn. Aug. 23, 2021).

Discovery will reveal *whether* this allegedly "fraudulent document" was presented to ORR by either D.S. or C.S and also whether ORR staff are blindly following a policy guideline to find a reason, any reason, to deny all releases. Discovery will also reveal *when* ORR knew of this "fraudulent document" and why it took them so many months to use this as an excuse for denying C.S. Discovery will reveal *why* ORR ignored their statutory duty to act expeditiously to determine an appropriate sponsor so that Petitioner "shall be promptly placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C.S. § 1232 (c)(2)(A). Discovery will reveal *why* placement with C.S. in the same home with his father, D.S., sisters N.F.S. and D.F.S, and little brother N.S., is not the least restrictive setting, of if ORR even considered least restrictive setting. Additionally, discovery will reveal whether or not ORR even took into account "the best interest of the child," when they considered the Petitioner's placement.

Early in their Opposition Respondents acknowledge that "The TVPRA requires ORR to prioritize the safety and well-being of UAC while in its care and upon release." Opposition at 4. However, discovery will reveal that continued detention of the Petitioner is detrimental to his well-being, (see e.g, ECF 21-4, Report of Dr. Lopez), and disclosure of records will support the conclusions of Dr. Lopez. Discovery will also reveal whether Respondents engaged in any effort to ameliorate Petitioner's trauma and mental health distress. Discovery will also reveal why Respondents led C.S to believe that she would be approved if she continued to submit appropriate documentation, including obtaining proper photo ID for N.F.S. and completing all document requests all over again, including additional documents required by newly implemented policies (ECF 21-3, Reagan Decl. ¶¶ 53, 53), if they were going to deny on an allegedly "fraudulent document" that had in their possession months before. As the Opposition states, at 13, "As a Category 3 sponsor for M.S., this fraud was disqualifying for Ms. Stenor," yet they compelled C.S. to submit document after document, in a long-attenuated series of requests, effectively deceiving her into participating in a sham process. Petitioner respectfully submits this is ORR acting in bad faith.

Lastly, discovery will finally get an answers under oath to the question of the November moratorium on releases. Although Respondents' Opposition characterizes this assertion as "Petitioners' speculation about an alleged 'Verbal Moratorium' on releases is just that – speculation," it has significant basis in fact. See Opposition at 14. Attorney Reagan attests to the fact that she has "overseen approximately 42 cases of children in custody of the Office of Refugee Resettlement ('ORR') residing in a long-term foster care program." ECF 21-3, ¶ 1. Her testimony in Court on January 15, 2026, in the matter of *E.H.C.F. v. Kennedy*, 3:25-CV2142 (VDO) (D.Conn) reflects that except as to a period of a few months when her KIND program was inactive due to lack of funding, she has not seen any children released to sponsors by ORR since March of 2025. The witnesses in the *C.F. v. Kennedy*, matter all described a change in ORR coinciding with the change in the presidential administration, and that before 2025, attorneys and advocates were able to obtain information from ORR, but now there is no transparency and advocates are ignored and get no responses to their inquiries. This is all the more reason for granting discovery here. Additionally, as to the moratorium, discovery is required to explain why there were 1,097 releases of children from ORR in Connecticut in 2024, but only 194 in 2025, and so far in 2026, only 2 in Connecticut.[4]

Respondents Are Incorrect About The Law

Throughout their Opposition, Respondents mischaracterize this case as an APA appeal and assert in part that "Petitioners are afforded process via their APA challenge to the Agency's decision." Opposition at 14. Petitioner denies this is due process. The Petitioner here has brought a federal habeas petition pursuant to 28 U.S.C. §2241, and is seeking release from confinement, a core habeas claim. Indeed, the Supreme Court recently reiterated that when "detainees formally request release from confinement, …their claims fall within the 'core' of the writ of habeas corpus and thus must be brought in habeas." *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025); see also *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973)(for a person "challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus."); *Boudin v. Thomas*, 732 F.2d 1107, 1111 (2d Cir. 1984)(habeas corpus is the exclusive remedy for prisoners challenging the fact or duration

[4] Unaccompanied Alien Children Released to Sponsors by State; https://acf.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state;

of their confinement, citing *Preiser.*) Although Respondents rely heavily on the APA, the APA itself precludes an APA appeal here based on the plain text of 5 U.S.C. § 704, which provides that an appeal may lie for "Agency action made reviewable by statute and final agency action *for which there is no other adequate remedy in a court* are subject to judicial review." Here, because habeas under 28 U.S.C. § 2241 provides a remedy for illegal custody, it constitutes an "adequate remedy," thereby precluding the use of the APA. See *Kirboga v. Larose*, No. 25-cv-3706-GPC-DDL, 2025 U.S. Dist. LEXIS 268946, at *10-11 (S.D. Cal. Dec. 31, 2025)("Petitioner, here, is utilizing the APA and the Fifth Amendment's Due Process Clause in his petition to challenge the lawfulness of his detention. Thus, the Petitioner's habeas claims do arise under § 2241 and are properly brought.") .

In *Maldonado v. Lloyd*, 2018 U.S. Dist. LEXIS 75902, at *1 (S.D.N.Y. May 4, 2018) a habeas corpus petition was brought, pursuant to 28 U.S.C. § 2241, on behalf a minor who was in the custody of the ORR. The District Court there went on to make findings of fact on facts outside the pleadings, which is precisely why there is "good cause" for discovery here. See 28 U.S.C. § 2243 ("The court shall summarily hear and determine the facts and dispose of the matter as law and justice require."). *Id.* at *2. Discovery here will aid the Court in its fact-finding function and will further the goals of truth-seeking in the interest of justice. See *J.S.R. by and through J.S.G. v. Sessions*, 330 F. Supp. 3d 731, 741 (D. Conn. 2018)(habeas petition and complaint for injunctive relief; evidentiary hearing held). "In deciding a motion for preliminary injunction, a court may consider the entire record including affidavits and other hearsay evidence." *Id.* at 738; *D.B. v. Cardall*, 826 F.3d 721, 728 (4th Cir. 2016)(petition for habeas corpus pursuant to 28 U.S.C. § 2241 where the court took affidavits, and documentary evidence).

Respondents in their Opposition at 11, and 14-15, incorrectly rely on a series of APA cases that are wholly inapposite here. The cite to *Chiayu Chang v. U.S. Citizenship & Immigr. Servs.*, 254 F. Supp. 3d 160 (D.D.C. 2017),(Opp. At 11), but that case is not a habeas, it is an APA appeal of a Visa denial.

They also cite to *Hadwan v. U.S. Dep't of State*, 340 F. Supp. 3d 351, 357 (S.D.N.Y. 2018)(mandamus action based on the APA related to a revoked passport); *Ali v. Pompeo*, No. 16-CV-3691-KAM-SJB, 2018 U.S. Dist. LEXIS 76891 (E.D.N.Y. May 2, 2018)(APA appeal); *Nat'l Post Office Collaborate v. Donahoe*, No. 3:13cv1406 (JBA), 2014 U.S. Dist. LEXIS 165369 (D. Conn. Nov. 26, 2014)(APA appeal under NEPA and NHPA); *Noroozi v. Napolitano*, 905 F. Supp. 2d 535 (S.D.N.Y. 2012)(APA appeal of Visa denial); *Comprehensive Cmty. Dev. Corp. v. Sebelius*, 890 F. Supp. 2d 305 (S.D.N.Y. 2012)(APA appeal of grant funding decision); *Citizens Against Casino Gambling In Erie Cty. v. Stevens*, 814 F. Supp. 2d 261(W.D.N.Y. 2011)(APA appeal of a casino operated by the Seneca Nation); *TOMAC v. Norton*, 193 F. Supp. 2d 182 (D.D.C. 2002)(APA appeal of a casino operated by the Pokagon Band); *Amfac Resorts, L.L.C. v. U.S. Dep't of the Interior*, 143 F. Supp. 2d 7 (D.D.C. 2001)(APA appeal by concessioners at National Parks); *Stewart v. Potts*, 126 F. Supp. 2d 428 (S.D. Tex. 2000)(APA appeal under the Clean Water Act and NEPA); *Earth Protector, Inc. v. Jacobs*, 993 F. Supp. 701 (D. Minn. 1998)(APA appeal of sales of acres of timber in the National Forest). None of the above cases involved a habeas corpus petition. Certainly none of them involved a habeas corpus petition brought by a 13-year-old-child who has been held in ORR detention as of now for about 480 days, or more than 15 months.

There is "good cause" for discovery here and Rule 6 of the Habeas Rules permit discovery for good cause. Moreover, all of the above-cited cases on which Respondents rely are generally old, and range from 1998 to 2017, and all of them pre-date *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024)("*Loper Bright*"). It is questionable if they hold the same force now in light of *Loper-Bright*. The Supreme Court in overruling *Chevron* deference to an agency such as ORR, recognized that deference to an agency decision had become "a license authorizing an agency to change positions as much as it likes." *Loper Bright* at 410-11. "*Chevron* thus allows agencies to change course even when Congress has given them no power to do so." *Id.* at 411. In this case, discovery is needed to see exactly how ORR changed positions throughout the sponsorship application process.[5]

Respondents argue throughout their opposition that Petitioner has no right to discovery however, where good cause is shown courts have allowed discovery in §2241 habeas petitions. See *Wilson v. Williams*, No. 4:20-cv-00794, 2020 U.S. Dist. LEXIS 140811, at *4-5 (N.D. Ohio Aug. 6, 2020)(granting motion for expedited discovery in habeas case challenging COVID response in prison); *Bowers v. United States Parole Comm'n*, 760 F.3d 1177, 1185 (11th Cir. 2014)(holding that the district court abused its discretion in denying motions for discovery in § 2241 proceeding). Here, Petitioner has made a showing of "good cause," and he has made "specific allegations" and there is reason to believe that the Petitioner may, "if the facts are fully developed, be able to demonstrate that he is... entitled to relief[.]" *Harris v. Nelson*, 394 U.S. 286, 300 (1969)("it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry."); *Bracy v. Gramley*, 520 U.S. 899, 909(1997) ("Habeas Corpus Rule 6 is meant to be 'consistent' with *Harris*."); *Lee v. Glunt*, 667 F.3d 397, 404 (3d Cir. 2012)(finding that the petitioner there had met the good cause standard and holding that denial of discovery was an abuse of discretion).

It is well-established that "the plaintiff is the master of the complaint." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 398-99 (1987). If Respondents were able to transform this habeas action into an APA appeal, "[i]f a defendant could do so, the plaintiff would be master of nothing." *Id.* at 399. Here, the Petitioner has a right to a full evidentiary hearing on his Motion for TRO and Preliminary Injunction, and he has properly limited his discovery in an effort to streamline and expedite that hearing.

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[5] See Jonathan Beier & Ruben Ortiz, et. al., Dismantling Protections: How ORR Policy Changes Trap Children in Extended Detention, ACACIA CENTER FOR JUSTICE, (Sept. 2025), https://acaciajustice.org/wp-content/uploads/2025/09/Acacia-Dismantling-Protections-2025-09.pdf

CONCLUSION

For all the foregoing reasons, and the reasons set forth in the Motion for Expedited Discovery and the opening Memorandum in Support of this motion, the Motion for Expedited Discovery should be granted.

Respectfully submitted,

PETITIONER
M.S., by his Next Friend C.S.

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CERTIFICATION

I hereby certify that on this date, January 19, 2026, a copy of the foregoing Reply Memorandum was electronically filed on the PACER docket of this case. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

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