

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

M.S., a minor by his Next Friend, C.S., : CIVIL NO. 3:25-CV-2170-(VDO)
Petitioner,

v. :

ANGIE SALAZAR, ET AL. : JANUARY 30, 2026
Respondents.

**PETITIONER'S REPLY MEMORANDUM IN REPLY TO RESPONDENTS' OPPOSITION
AND IN SUPPORT OF MOTION FOR TRO AND PRELIMINARY INJUNCTION**

I. Respondents Improperly Characterize this Petition as Exclusively an APA Challenge, Disregarding and Downplaying Significant Due Process Violations and Claim for Habeas Relief

Children have a fundamental liberty interest in freedom from confinement. The Supreme Court has recognized that “the interest in being free from physical detention” by the state is “the most elemental of liberty interests[.]” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). A child’s interest in being free from confinement is no less fundamental than that of an adult. See *In re Gault*, 387 U.S. 1, 13 (1967) (“[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone...”); *Reno v. Flores*, 507 U.S. 292, 316 (1993) (O’Connor, J. and Souter, J., concurring) (“Children, too, have a core liberty interest in remaining free from institutional confinement. In this respect, a child’s constitutional freedom from bodily restraint is no narrower than an adult’s.”) (Internal quotation marks omitted.). Minors, like adults, also have a substantial liberty interest “in avoiding unjustified physical restraint.” *Lucas R. v. Becerra*, 2022 U.S. Dist. LEXIS 124773, 2022 WL 2177454, at *14 (C.D. Cal. Mar. 11, 2022). See, e.g., *Parham v. J.R.*, 442 U.S. 584, 600 (1979).

Respondents’ assertion that children “are always in some form of custody,” Resp. Opp. at 18, quoting *Reno v. Flores*, 507 U.S. 292, 302 (1993)), while technically correct, does not mean that government custody is the same as the custody of a qualified sponsor with a longstanding relationship to

the child. Children, like adults, “possess a constitutionally protected interest in avoiding unjustified physical restraint.” *Lucas R. v. Becerra*, 2022 WL 2177454, at *14 (C.D. Cal. Mar. 11, 2022).

In this case, M.S., a 13-year-old child, is being held in a long-term foster care program operated by agents of the federal government. He is under constant supervision by individuals required to report on his behavior, eating-habits, mental state, educational accomplishments, physical whereabouts etc. and report that information directly to the federal government on a weekly basis. His placement with a particular foster family can be changed at *any time without any notice* to him, his proposed sponsor, or his legal representative. His current placement with a long-term foster care program can also be changed at *any time*, similarly *without any notice* or opportunity to object; meaning that he can be transferred to another state, another program, or a more restrictive congregate-care setting at any time or any day, subject only to the government’s exclusive determination. M.S.’s continued detention is at the core of this case and viewing it only as an APA challenge fails to recognize the stakes of the claim. ORR’s repeated violation of Petitioner’s rights and departure from their core mandate to promptly release children, in accordance with their best interests, has the real-life consequence of Petitioner remaining detained for the entirety of the remaining years of his childhood. These statutory and constitutional violations are why Petitioner’s case is properly brought as petition for habeas relief. Moreover, the sole remedy that can address these violations is an order from this Court directing Petitioner’s immediate release from such unlawful detention.

A. Respondents Mischaracterize the Relationship between M.S. and C.S. in Attempt to Minimize the Violation of Petitioner’s Substantive Due Process Rights

Following the results of the DNA test that determined D.S. is not M.S.’s biological father, ORR recategorized D.S. as a Category 3 sponsor. Upon submission of an application by C.S. in January 2025 and again in August 2025, ORR also categorized C.S. as a Category 3 sponsor. Opp. at 10. Respondents state that C.S. was categorized as such because she has “no legal or biological relationship” with M.S.,

relying on the UC Policy Guide sponsor distinctions. Opp. at 7. The government is wrong to state that C.S. has “no legal or biological relationship” with M.S. She is his legal parent under the law of the jurisdiction where that relationship formed, Haiti,¹ and also likely under Connecticut law.² The government’s DNA testing suggests that biological parent-child relationships are necessarily legal parent-child relationships and vice versa. (Biswa Decl. ¶25; Opp at 9-10) But that is incorrect.

As there is no general federal parentage law, federal law routinely looks to state law to determine questions of parentage. State law provides routes to parentage for both biological and nonbiological parents. Not all biological parents are legal parents, and not all legal parents are biological parents. Many nonbiological parents are legal parents without obtaining a legal determination of parentage. This is true of presumed parents (including the marital presumption of parentage that existed from the nation’s founding), intended parents who have children through assisted reproduction, and functional parents who have developed a parent-child relationship in the absence of a biological or adoptive connection. C.S. is M.S.’s legal parent (stepmother) under the law of the jurisdiction where that relationship formed, Haiti, as well as the two states where he has resided in ORR care, Connecticut³ and California.⁴

¹ See Law on Paternity, Maternity, and Filiation (Republic of Haiti), enacted May 28, 2014, published in *Le Moniteur* No. 105 (June 4, 2014), translated at Docslib, <https://docslib.org/doc/8672907/law-on-paternity-maternity-and-filiation> (providing English translation of Article 2 (stating that “filiation is established by recording a birth with a vital records officer in Haiti...”).

² Although D.S. is seeking a paternity judgment in Connecticut, it is not required under the principal of international comity. *Traders’ Tr. Co. v. Davidson*, 146 Minn. 224, 178 N.W. 735 (1920); *Hilton v. Guyot*, 159 U.S. 113 (1895) (finding that “[...]comity] is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.”) And absent a paternity judgement, state courts would still recognize D.S. as M.S.’s legal father, as there has been no legal determination that he is not the father, and biological and legal parentage are distinguishable. See Douglas NeJaime, *The Constitution of Parenthood*, 72 STAN. L. REV. 261, 275 (2020)

³ See Conn. Gen. Stat. §§46b-489, 46b-490, 46b-491; (Connecticut’s Parentage Act)

⁴ California’s Uniform Parentage Act provides a comprehensive legal framework for establishing the relationship between parents and children. It applies equally to all families, regardless of marital status or biological connection. The California Uniform Parentage Act (UPA) is found in Family Code §§7600-7730; see Cal. Fam. Code §§ 7600 et. seq. (Deering 2025). California’s “holding out” presumption treats a person as a parent if the person resided with the child and held the child out as their child at some point during the child’s minority

Despite Respondents' argument to the contrary, the Certified Administrative Record ("CAR") clearly shows a bona fide relationship between M.S. and C.S. with her serving as a prior caregiver and M.S. viewing her and referring to her as his mother.⁵ Her categorization beneath both Category 2A sponsors, which could include the spouse of an aunt or uncle who has previously served as a caregiver for the child, and Category 2B sponsors, which could include the spouse of an aunt, uncle or other relative who has never previously served as a caregiver, is arbitrary given ORR's finding of a bona fide relationship. Furthermore, Respondents are wrong to state that "Petitioners in this case ask the Court to extend the nature of constitutional liberty interests in the familial sphere well beyond that which current authority provides" (Opp. at 20) and to imply that biological parent-child relationships are constitutionally protected but other parent-child relationships are not. Courts have long recognized parental rights and rights to family integrity outside of biological parent-child relationships. See, e.g., *Moore v. City of East Cleveland*, 431 U.S. 494 (1977)(protecting substantive due process rights to grandmother to live with her grandson); *In re Parentage of L.B.*, 155 Wash. 2d 679, 122 P.3d 161 (2005) (acknowledging the constitutional dimensions of the relationship between a nonbiological, nonadoptive de facto parent and a child); *Smith v. Guest*, 16 A.3d 920 (Del. 2011)(recognizing that a nonbiological "legal 'parent'" under Delaware law enjoys a "'fundamental parental interest' in raising" their child under the Due Process Clause).⁶ Finally, this categorization completely ignores social and cultural norms and the extensive family history in this case. M.S. and his family reasonably believed they were related

⁵ "Based on the information retrieved from Mrs. [C.S.] (sponsor) and (child), [M.S.]. Based on the assessments and documents received there is sufficient corroboration to be confident that there is a relationship between the potential sponsor of the child and the child's family. The Case Manager and Clinician do not have any concerns with the relationship between the child and the sponsor. The sponsor is an adequate sponsor and has shown that throughout the reunification process." CAR p. 756. "Case Manager gathered a Bonafide relationship through matching CAT 3 Corroboration questions. The case Manager conducted an interview with child and sponsor and was able to establish a correlation between statements." CAR p. 1570.

⁶ As importantly, the Court has held that some biological parents lack a constitutionally protected relationship with their children. See *Lehr v. Robertson*, 463 U.S. 248, 260 (1983) ("Parental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring."); *Michael H. v. Gerald D.*, 491 U.S. 110 (1989) (concluding that the child's nonmarital biological father lacked a protected liberty interest in his relationship with the child, instead allowing California's marital presumption to treat the mother's husband as the child's legal father).

for 13 years, and Petitioner was raised as a member of the Stenor family, indistinguishable from any other child. CAR p. 755 (“Per sponsor, she gives [M.S.] the same love she gives her own children because she sees him as her own. [M.S.] cannot recall the exact details as he was too young to remember but to him he states he has known sponsor his whole life and has viewed her as a mom.”). The results of a DNA test do not change that functional parent-child relationship. ORR’s own records clearly document that “As per the assigned CM’s, the CM observed that the UAC and sponsor share a motherson [sic] type relationship, indicating a strong pre-existing bond. The CM has no concerns regarding the nature or quality of their relationship.” CAR at 2516.

In mis-categorizing C.S. as a Category 3 sponsor, Respondents stripped essential due process rights from M.S., including the right for his sponsor to receive a reasoned decision and evidence of the basis for denial and the opportunity to appeal the denial with ORR. UACB Policy Guide § 2.7.8. Under the UC Policy Guide, all other sponsor categories (1, 2A and 2B) are given appeal rights, but Category 3 sponsors are not. *Id.* While this may seem reasonable for a potential sponsor who, in fact, does not have any prior relationship with the child, by ORR’s own admission, that is not the case here. They also seek to minimize the violations of Petitioner’s substantive due process right to family unity by attempting to claim this is not a family because C.S. is a Category 3 sponsor.⁷

Respondents cannot ignore that the arbitrary categories defined in the UC Policy Guide have no basis in statute and ignore the most critical component of ORR’s mission: to act in the best interests of the child. Respondents openly admit there are no due process procedures for C.S., and indeed that she

⁷ Petitioner’s time apart from D.S. and C.S. are also not indicative of his substantive due process right to family unity. In *Santos v. Smith*, Respondents argued that Petitioner’s case was distinguishable from ones in which a child is removed from his parents’ home because Petitioner and his mother had not been residing together for many years. *Santos v. Smith*, 260 F. Supp. 3d 598, 611-612 (W.D. Va. 2017). While the Court noted that is a factor to be considered in balancing the nature of the private interest, the Court specifically noted that the child came to the United States in order to live with his mother, and “[the child] and his mother had a close relationship by all accounts, speaking at least weekly by telephone while they were living apart.” *Id.* The Court went on to note that almost every recommendation to ORR has recommended reunification, and the home study visit was positive as to parental fitness, thus finding, “although the authority in which a child is removed from a home is not directly on point, this is certainly a situation where there is an existing parental relationship (although they have not resided together for years)...” *Id.*

was denied due process throughout the application process and was denied any notice of a decision until after a decision had been made. She had no opportunity to participate in the process other than to submit a never-ending series of demands for documents, without ever having an opportunity to be heard on the issue used as a basis for denial (i.e. submission of a “fraudulent” birth certificate).⁸ Importantly, Respondents’ Opposition wholly embraces these arbitrary category distinctions without giving any cognizance to the substantive right to family integrity, by simply saying, in effect, we followed our policy guidelines, and that is all the due process that is required. This position is contrary to law and ignores the statutory mandate to assure that unaccompanied children are “promptly placed in the least restrictive setting that is in the best interest of the child.” 8 U.S.C. § 1232(c)(2)(A). Because the Respondents’ conduct is contrary to law, even considering *arguendo* this to be an APA case, it must be set aside and declared null and void. 5 U.S.C. § 706. An agency’s interpretation cannot supersede the language chosen by Congress or alter or amend a law of Congress. *Mohasco Corp. v. Silver*, 447 U.S. 807, 825 (1980).

B. Respondents Provide No Response or Justification for their Repeated Violations of Petitioner’s Procedural Due Process Rights

Respondents repeatedly violated Petitioner’s procedural due process rights. Those violations include, but are not limited to:

- Changing the requirements for sponsorship throughout the process;
- Failing to inform M.S.’s proposed sponsor of concerns regarding fraudulent documentation (instead providing alternate and illegitimate reasons for the delays and lack of approval of sponsorship);
- Pressuring the withdrawal of sponsorship application under false pretenses;
- Designating M.S.’s proposed sponsor as Category 3;
- Significantly delaying and failing to comply with regulatory and sub-regulatory timelines for processing sponsorship applications;
- Providing no opportunity to address the basis for denial of sponsorship application; and

⁸ At no point prior to the sponsorship denial were C.S., her attorney, M.S., his immigration attorney, or his Child Advocate informed that ORR believed D.S. had submitted a fraudulent document and that was the reason M.S. was not being released.

- Continued detention of Petitioner for over 490 days.

Rather than addressing these failures to provide fair due process procedures and unjustifiable delays, Respondents simply assert that the APA should govern this petition and the sole question before the court is whether the denial of M.S.'s sponsor was arbitrary and capricious. In Respondents' Opposition they appear to argue that in this case, unlike *E.H.C.F v Kennedy*, 3:25-cv-2142(VDO), there was a "final decision" and that "Petitioners seek Article III review of a final agency decision." Opp. at 14. However, even after ORR has already made a decision denying the sponsorship application, the Court should still and indeed must employ a procedural due process analysis. See *D.B. v. Cardall*, 826 F.3d 721 (4th Cir. 2016). As this Court noted, (ECF No. 58), Petitioner's constitutional claims will be reviewed, even if at this point in time, the record is limited to the CAR, and even construing *arguendo* this as an APA appeal.

In *D.B. v. Cardall*, there had been a final agency decision, as well as an administrative appeal within ORR/ACF, but nevertheless the Court held that the sponsor's statutory and constitutional due process contentions fall within the traditional scope of § 2241 habeas corpus review. *Id.* at 731. The Fourth Circuit remanded the case back to the District Court due to its failure to apply a *Mathews v. Eldridge* analysis and required the District Court to reevaluate the case under the rubric of procedural due process. *Id.*; see also *Santos v. Smith*, 260 F. Supp. 3d 598, 614 (W.D. Va. 2017)(finding very significant, unexplained delay and concluding that the delay, even without other procedural deficiencies, violated due process.) These cases demonstrate that even in the context where an administrative decision has been made, the Court is still required to test the sufficiency of the process afforded to the Petitioner.⁹

⁹ Respondents may argue that these cases rely heavily on the fundamental due process right to family unity, which they arbitrarily define as a biological family. Petitioner does not concede that his isn't a family unity case because C.S. is M.S.'s de facto parent. Additionally, both of the above cases also involved the child's fundamental right to freedom from confinement. See *A.N.P.S. v. Salazar*, 1:25-cv-14778 (N.D. Ill, E.D. Dec.22, 2025) (attached hereto as Exhibit A). Although *A.N.P.S.* involves a child who was re-detained, it nevertheless emphasizes that "minors nonetheless 'retain a strong interest in being free from unnecessary government interference with their liberty.'" "And '[a]liens, even aliens whose presence in this

In this case, although Petitioner also contends that the denial of his sponsor was arbitrary and capricious, he has raised numerous claims of procedural and substantive due process violations in his Motion for TRO and Preliminary Injunction, which have been either completely ignored or inadequately addressed by Respondents' Opposition. Arguments not raised are waived. *Weinberger v. Town of Fallsburg*, 801 F. App'x 37 (2d Cir. 2020); see also *Norton v. Sam's Club*, 145 F.3d 114, 117 (2d Cir. 1998). Respondents' argument, if any, appears to be that they can indefinitely detain a minor child, as long as they come up with "some reason" for denial of the sponsor,¹⁰ and Petitioner is without any remedy to address his detention. Respondents' Opposition does not even mention *Zadvydas* or acknowledge that there is no significant likelihood of Petitioner's release from ORR detention in the reasonably foreseeable future. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). This unconscionable delay and endless detention combined with the actual presence in the United States of a capable caregiver, C.S., and a loving family living in Lauderhill, Florida is patently unconstitutional. *Santos v. Smith*, 260 F. Supp. 3d 598, 614 (W.D. Va. 2017). Respondents not only failed to respond to the more than twelve-month delay, they also are deliberately indifferent to this constitutional violation of Petitioner's rights.

C. Respondents Are Unable to Justify Petitioner's Continued Detention and the Denial of his Sponsor Under ORR's Governing Regulations

The TVPRA tasks ORR with ensuring that unaccompanied children are "promptly placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). The least restrictive setting is likely to be release from ORR custody. See 8 U.S.C. § 1232(c)(2)(A); 45 C.F.R. §

country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments.' *Plyler v. Doe*, 457 U.S. 202, 210 (1982). *Id.* at 9. (other citations omitted)

¹⁰ Under Respondents' interpretation of this case, they may put any basis for denial in the UC Policy Guide, which involves no public notice or comment procedure, then use that basis for denial without providing a child or their sponsor any opportunity to submit evidence, respond to, or appeal the denial and without demonstrating how the basis for denial relates back to ORR's core mandate and regulations. Under this interpretation, tomorrow Respondents could add to the UC Policy Guide, "Any Category 3 sponsor that is undocumented must be denied," or "Any Category 3 sponsor that has worked without employment authorization must be denied," and would not be required to provide a justification for that basis for denial.

410.1209(e); *Saravia v. Sessions*, 905 F.3d 1137, 1143 (9th Cir. 2018). ORR must release a child from its custody without unnecessary delay, subject to an assessment of sponsor suitability. 45 C.F.R. §

410.1201(a). A sponsor is suitable if they can provide for the child's physical and mental wellbeing. *Id.* at 410.1205(a). A potential sponsorship shall be denied if ORR determines that the potential sponsor is not capable of providing for the physical and mental well-being of the unaccompanied child or that the placement would result in danger to the unaccompanied child or the community. 45 C.F.R. §

410.1205(a).¹¹

ORR has not shown that C.S. is incapable of providing for M.S.'s physical and mental well-being or that release to her care would result in a danger to M.S. or the community. Instead, ORR alleges, now, for the first time in the context of this litigation, via a Declaration of Mr. Biswas, that there are concerns as to the existence of a pre-existing social relationship between M.S. and C.S., discrepancies in documents, and "limited verifiable family history with ORR unable to contact the grandparents M.S. had been living with to confirm C.S. and D.S.'s story that M.S.'s biological mother, Rositta Pierre had passed away and no death certificate for Ms. Pierre was produced." Biswas Decl. ¶ 30. However, these allegations were not cited as the basis for denial in the email sent to M.S.'s immigration attorney on November 14, 2025, and are contradicted by ORR's own records. Rather the record shows that ORR agents (namely the case manager(s) employed by New Life Foster Family Agency) conducted extensive family sessions and obtained multiple accounts corroborating the relationship between M.S. and C.S. As already stated above, ORR found the relationship between C.S. and D.S. to be bona fide. CAR at 2516. As to verifiable family history, the CAR states,

¹¹ Although Respondents argue that the TVPRA does not create a private right of action (Opp. at 17) that argument misses the mark because it is clear that Petitioner is permitted to seek relief for violations of the TVPRA through the APA. *Lucas R. v. Azar*, No. 2:18-cv-05741-DMG-BFM, 2018 WL 7200716, at *7, n.12, 2018 U.S. Dist. LEXIS 220971, at *18 n.12 (C.D. Cal. Dec. 27, 2018). ("the APA still permits them to seek relief for violations of the TVPRA. See 5 U.S.C. § 706(2)(A).")

“We [ORR] made contact with [M.S.’s] sister [in Mexico] to corroborate with what the child stated regarding growing up and the journey to the U.S. CM has no concerns after speaking to the older sister who provided additional information.” CAR p. 2068.

“On 02/25/25, CM was able to speak with the daughter living in Mexico. She was able to provide a picture of her ID and selfie, she was also able to confirm information provided by sponsor and child.” CAR p. 2069.

In speaking with M.S.’s biological aunt, Visita Pierre, “CM asked since when [M.S.] lived with [D.S.]. She stated that since he was a baby. CM asked if she knows that if [D.S.]’s wife took care of [M.S.] as well. She said yes because [M.S.] lived with them.” CAR p. 2069.

As to the verification of biological mother’s death and M.S. going to live with C.S. and D.S., the CAR states,

“CM spoke to [maternal aunt, Visita Pierre] she was able to provide information and a selfie and picture of her ID. She stated that [D.S.] has always taken care of her sister. That when her sister got pregnant, her sister told her that [D.S.] was the father of [M.S.]. She stated that [D.S.] has taken care of [M.S.] ever since her sister was pregnant. [D.S.] has been there to take care of her sister even when she was sick like when she had a cold he would be there to care for her. [M.S.]’s biological mother died in 2012 when [M.S.] was about 3 months old. She said she died very quick. She got very sick, headache, fever, almost like a cold, the medicine and tea they would give her at the hospital was not helping her and she died quickly. She is unable to obtain the death certificate of her sister. She states that her family felt very comfortable in [D.S.] taking [M.S.] as they believed he was the father but also because they saw how well he took care of [M.S.]’s mother and they just felt very sure and comfortable he would be able to continue to take care [M.S.] as well.” CAR p. 269.

“CM asked maternal aunt again for a death certificate of child’s mother, she states they do not as they were unable to register her death.” CAR p. 214.

“CM spoke with child’s maternal aunt to ask if the death was registered, per maternal aunt they did not register the death. Maternal aunt stated that her sister, child’s mother, was buried by the Burial Agency but was not registered due to financial reason, they did not have enough money at that time of death to be able to register her.” CAR p. 218.

Given ORR’s documented corroboration of M.S.’s relationship with C.S., as well as the corroboration of the death of his mother, and the impossibility of obtaining her death certificate, as the mother’s own sister repeatedly informed ORR that her death was not registered, it is disingenuous of Respondents to assert these as “significant concerns during the sponsorship vetting process for [C.S.].” *See Biswas Decl.* ¶ 30 (“ORR was unable to confirm the identity of M.S.’s biological mother, or whether M.S.’s biological mother was alive.”) *Opp.* at 11, 18. Finally, Respondents justify M.S.’s more than 490-day detention and

significant delays in the sponsorship process by arguing that ORR must front-load child safety considerations because, unlike state child welfare authorities, ORR has no ability to resume custody once a child is released. Opp. at 6. While it is certainly true that ORR must take precautions when assessing sponsor suitability, an inability to resume custody is not an excuse for indefinite detention and disregards protections available to children following their release. For example, ORR may approve release with mandatory post-release social services (“PRS”).¹² And should ORR or their agent (i.e. PRS workers) suspect that a child requires intervention, there is nothing prohibiting them from reporting those concerns to state welfare agencies, who, as ORR acknowledges, do have the authority to investigate allegations of abuse or neglect and remove a child from the home. Thus, ORR has not established sufficient justification for Petitioner’s continued detention, and this case is properly brought as a habeas petition challenging the unlawful detention of Petitioner.

II. Respondents Have Not Sufficiently Demonstrated Sponsor or Sponsor’s Household Member Committed Fraudulent Activity

The sub-regulatory section that Respondents rely on a basis for the denial of C.S.’s sponsorship application 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: The potential sponsor or a member of the potential sponsor’s household: Has **knowingly** provided false information, committed perjury, or submitted fraudulent documentation **during** the sponsor assessment process.” UACB Section 2.7.4 (emphasis added).

The UC Policy Guide also states,

“ORR will deny release if it is determined that fraudulent documents were submitted during the sponsor application process, regardless of sponsor category. Exceptions will only be made on a case-by-case basis and must be supported by clear justification and thorough documentation. Such justification must be documented and uploaded to ORR’s

¹² The ORR Federal Field Specialist (ORR/FFS), acting as an agent of HHS/ORR, may approve a release with post-release services (“PRS”) when the release is determined to be safe and appropriate, but the unaccompanied alien child and sponsor need additional assistance to connect them to appropriate resources in the community or to address other concerns, such as mental health or other needs that could benefit from ongoing assistance from a social welfare agency.” UACB Policy Guide section 2.7.2. “PRS” encompasses three (3) levels of support: Level One (1) - Virtual Check-ins (see Section 6.3), Level Two (2) - Case Management Services (see Section 6.4), and Level Three (3) - Intensive Engagements (see Section 6.5).

case management system. Case-by-case exceptions must be adjudicated by the Director or their designee.” UACB Section 2.2.4.

In this case, it is alleged that C.S.’s husband and household member, D.S., submitted a fraudulent birth certificate (aka the “Original Birth Certificate”) on behalf of M.S. and stated in his (withdrawn) sponsorship application that C.S. is M.S.’s mother. Respondents also now allege that there are concerns about C.S.’s own birth certificate, namely that the certificate is dated prior to her date of birth. These allegations are false and are denied. Indeed, they would require an evidentiary hearing to determine the true facts. Respondents have not sufficiently proven that D.S. knowingly submitted a fraudulent document or made a knowingly false statement or that such activity occurred during the sponsorship process. Indeed, the unsigned, anonymous text in the CAR at p.2356 alleging concerns of fraud are wholly inadmissible, and incompetent hearsay, upon which Mr. Biswas relies, (Biswas decl. ¶¶ 22, 30), making them double hearsay, and totally lacking in foundation.

A. The Original Birth Certificate Has Not Been Proven to be Fraudulent

ORR has not proved or even explicitly stated to a certain degree that the document in question, the birth certificate M.S. possessed upon arrival in ORR care (hereinafter “the Original Birth Certificate”) is fraudulent. In his affidavit, Mr. Biswas admits, “ORR determined that the birth certificate was **likely** fraudulent.” (Biswas, Decl. ¶ 23)(emphasis added). However, ORR has never concluded that the document is, in fact, fraudulent. The CAR repeatedly states that the Haitian Consulate was non-responsive to their inquiries about the validity of the document, and Department of Homeland Security officials were similarly unable to determine its authenticity or lack thereof.¹³ ORR has demonstrated absolutely no cultural competence to determine the authenticity or significance of any of the Haitian

¹³ CAR states that as of 11/08/24, four follow-ups had been made with the ORR Document Verification Team and no response was provided. CAR p. 1569. It also states that as of 03/03/25, Homeland Security was still working on the document verification, and “The attached advised that with everything going on, he no longer has someone embed who would be able to verify documents.” *Id.*

documents at issue in this case. In questioning C.S. about the origin of the Original Birth Certificate, C.S. explained to ORR that her brother's husband assisted in registering the births of D.F.S. and M.S., as she was still recovering from the birth of D.F.S. CAR p. 1569. Although she provided him with a note listing the names, dates of birth and birth parents of each child (including the name of M.S.'s birth mother, Rosita Pierre), the registering entity made an error on M.S.'s birth certificate, which she later corrected while M.S. was still a baby. *Id.* Given the concerns ORR raised about M.S.'s birth certificate (i.e. that it looked identical to his sister, D.F.S.'s birth certificate), it seems the reasonable explanation is an innocent error by the Haitian agency at the time of original registration, which was later rectified by C.S. while M.S. was still a young child. This explains why the agency may have had two birth certificates for M.S., one with incorrect information and another with the correct information. ORR has not presented and there exists no evidence in the record to contradict C.S.'s explanation.¹⁴ Thus, the document at the heart of ORR's decision and the basis for their denial has not been proven to be fraudulent, and as ORR itself even acknowledges, while they suspect it is "likely" fraudulent, they are not certain. It is certain however, that there were no due process procedures in the application process for C.S. to be given notice of ORR's concern, nor did C.S. have a procedurally adequate opportunity to give her side of the story. To the extent her story is clearly and honestly reported in the ORR record, ORR disregarded the only person who had first-hand knowledge in an arbitrary and capricious denial, which ignores the best interests of the Petitioner.

B. D.S. Did Not *Knowingly* Provide the Original Birth Certificate to ORR or Make False Statements as to C.S.'s Relationship to M.S. *During* the Sponsorship Process

Neither C.S. nor D.S. ever provided the allegedly fraudulent Original Birth Certificate to ORR. As stated multiple times throughout the CAR, "Sponsor [D.S.] did not provide the original [Birth

¹⁴ Indeed, C.S.'s account is corroborated by the production of the second, correct birth certificate.

Certificate], child arrived to the facility with this certificate.” CAR p. 2065; *see also* CAR p. 270 (“Child arrived with BC.”). The act of providing the Original Birth Certificate to M.S. at an earlier date while he was still outside the U.S. cannot be deemed a *knowing* submission of the document to ORR by D.S. because at that time, D.S. *did not even know ORR existed* or that M.S. would be placed in their custody or that he would need to submit a sponsorship application. Furthermore, it is abundantly clear that D.S. never tried to claim that C.S. was M.S.’s *biological* mother. In one of his first conversations with ORR on September 30, 2024, D.S. informed ORR, “the child’s biological mother passed away in COO (“Country of Origin”) when child was 3 months old.” CAR p. 291. Therefore, it would not serve any material purpose for D.S. to submit a fraudulent birth certificate claiming that C.S. was M.S.’s biological mother, as he never tried to pass C.S. off as M.S.’s biological mother.

Separate from the submission of the Original Birth Certificate, Respondents contend that C.S. had “originally been identified as M.S.’s mother on D.S.’s sponsor application,” and D.S. therefore also made a fraudulent statement to ORR. Biswas Dec. ¶ 30. However, as reported by Federal Field Specialist Ricardo Rivera in the CAR, the actual statement in D.S.’s sponsorship application reads, “She [C.S.] is the mother of the children. She will meet their needs such as making them their meals, transport them to school, take them to any needed doctor appointments.” CAR p. 2075. This is significantly different than D.S. identifying C.S. as M.S.’s biological mother and is not an inherently false statement. At the time of completing that application, D.S. believed he was M.S.’s biological father, which would have made C.S. the legal stepmother of M.S. at that time. In accounting for cultural and social norms, as well as the terminology used by the family, and D.S.’s belief of the relationship at that time, simply referring to C.S. as “the mother of the children” does not amount to a knowingly fraudulent statement.¹⁵

¹⁵ CAR shows M.S. thought of C.S. as his mother and exclusively referred to her as his mother.

III. Mandatory Denial of Category 3 Sponsors for Alleged Fraudulent Activity is Arbitrary and Capricious

Federal regulations state, “an unaccompanied child... shall be promptly placed in the least restrictive setting that is in the best interest of the child,” and “a potential sponsorship shall be denied if... ORR determines that the potential sponsor is not capable of providing for the physical and mental well-being of the unaccompanied child or that the placement would result in danger to the unaccompanied child or the community.” 8 U.S.C. § 1232(c)(2)(A); 45 C.F.R. § 410.1205(a). While more specific sub-regulatory reasons for denial are likely permissible, those reasons must relate back to ORR’s governing regulations and core statutory mandate. “The limits of the power to issue regulations are well settled. *International Ry. Co. v. Davidson*, 257 U.S. 506, 514. They may not extend a statute or modify its provisions.” *Campbell v. Galeno Chem. Co.*, 281 U.S. 599, 610 (1930). Here, ORR’s policies and practices not only modify the statute requiring prompt placement of a child in the least restrictive setting, they also effectively eliminate any consideration of the best interests of the child and elevate form (i.e. document review) over substance, by inventing categories and reasons for denial that appear nowhere in the statutory or regulatory scheme.

A bright line rule of mandatory denial when the household member of a Category 3 sponsor has submitted a fraudulent document is inherently arbitrary because it fails to take into account the best interests of the child, the least restrictive setting, a sponsor’s ability to provide for the child’s wellbeing, and safety of the child, as exemplified by the *actual facts* of a particular child’s situation. Agency action is arbitrary and capricious when it fails to “examine the **relevant data** and articulate a satisfactory explanation for its action” or when it has “**entirely failed to consider an important aspect of the problem**, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”

Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43-44(1983) (emphasis added) (“an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider.”)

While Respondents may contend that submission of a fraudulent document is *an indicator* of potential safety concerns or risk of trafficking, in this case, ORR has repeatedly and without a doubt stated that it does not have concerns that M.S. would be at risk of trafficking and it has no concerns about his safety should he be released to C.S. Non-exhaustive excerpts from the CAR state,

“After a careful assessment of sponsor and a positive home study recommendation, case manager believes that sponsor [C.S.] has the ability to safely care for the child, provide for the child’s needs and ensure the safety and wellbeing of the child.” CAR p. 2075.

“There are no disqualifying factors under the criteria for release denial.” CAR p. 2066.

“Based on the information retrieved from Mrs. Cleante Stenor (sponsor) and (child), [M.S.] Stenor. Based on the assessments and documents received there is sufficient corroboration to be confident that there is a relationship between the potential sponsor of the child and the child’s family. The Case Manager and Clinician do not have any concerns with the relationship between the child and the sponsor. The sponsor is an adequate sponsor and has shown that throughout the reunification process.” CAR p. 756

In conducting a screening for human trafficking, when prompted to “Indicate the likelihood that the client is a victim of trafficking,” an ORR Clinician selected, “Certainly Not.” CAR p. 1949.

In addition to the numerous occasions throughout the CAR where ORR explicitly notes that they do not have concerns about the child’s safety with C.S. or C.S.’s ability to provide for his care, it is clear ORR did not believe her to be a human trafficker or unable to provide for the physical and mental wellbeing of a child because they released two other children, N.F.S. and D.F.S., into her care in April 2025. In his affidavit, Mr. Biswas even states, “ORR did not have any child welfare concerns in releasing D.F.S. and N.F.S. to C.S., even with D.S. as a household member.” Biswas Dec. ¶ 28.

Presumably ORR made an exception or exercised discretion allowable to a Category 1 sponsor, that allowed for D.F.S. and N.F.S. to be released to C.S. despite D.S.’s alleged submission of a

fraudulent document. ORR is authorized under their own UC Policy Guide to make the same exception for M.S.,¹⁶ a child who was raised and cared for in exactly the same circumstances as D.F.S. (his sister of only approximately 2 months difference in age) and is seeking sponsorship by the exact same person as D.F.S. While Respondents may contend the difference between D.F.S. and M.S. is a biological relationship to C.S., as argued above that difference is arbitrary, and ignores Petitioner's best interests. There is no practical difference in evaluating the ability of C.S. to provide for M.S.'s physical and mental wellbeing and safety, as compared to his sister, D.F.S., especially given that ORR has not alleged any safety concerns. ORR's steadfast adherence to the language in their UC Policy Guide that states in part, ORR "will deny release to a Category 2 or Category 3...." (See UACB Policy Guide § 2.7.4; Biswas Decl. ¶31), ignores another provision of their own Policy Guide that allows for exceptions, and states, "Exceptions will only be made on a case-by-case basis and must be supported by clear justification and thorough documentation." UACB Policy Guide § 2.2.4. Respondents' failure to consider an exception in this case is arbitrary and capricious, and has caused Petitioner irreparable injury, delay of over sixteen months, with no significant likelihood of Petitioner's release from ORR detention in the reasonably foreseeable future in violation of *Zadvydas, supra*, and his constitutional rights.

CONCLUSION

For all the foregoing reasons, and the reasons stated in Petitioner's opening memorandum and supporting Declarations, the Motion for a TRO and Preliminary Injunction should be granted. This Court should order Petitioner's immediate release without any further delay.

¹⁶ See *supra*, at p. 11-12, citing "Exceptions will only be made on a case-by-case basis and must be supported by clear justification and thorough documentation. Such justification must be documented and uploaded to ORR's case management system. Case-by-case exceptions must be adjudicated by the Director or their designee." UACB Section 2.2.4.

Respectfully submitted,

PETITIONER

M.S., a minor by his Next friend, C.S.

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CERTIFICATE OF SERVICE

I, Steven R. Strom, counsel of record for the Petitioner, do hereby certify that on this 30th day of January, 2026, a copy of the foregoing Reply Memorandum 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 as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

By: Steven R. Strom

Steven R. Strom

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