UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

K.Y.M.C. and C.Y.M.C., minors, by and through their next friend, [redacted]

Petitioners/Plaintiffs,

v.

ROBERT F. KENNEDY, JR., in his official capacity as Secretary of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201; **ANGIE SALAZAR**, in her official capacity as Acting Director of Office of Refugee Resettlement, 330 C Street SW, Room 5123, Washington, DC 20201; **AMERICA CERVANTES**, in her official capacity as Federal Field Specialist, Office of Refugee Resettlement; and **MAYRA LOPEZ**, in her official capacity as Senior Program Director of LSSS Upbring Krause Children's Shelter,

Respondents/Defendants

Case No. 4:26-cv-1656

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Date: February 27, 2026

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

K.Y.M.C. and C.Y.M.C., and [redacted], as Next Friend, petition this Court for a Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2241 and the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*, to remedy their continued unlawful detention by Respondents. Petitioners hereby request that an immediate hearing be set on this matter. Petitioners also request that they be released during the pendency of this Petition. In support thereof, Petitioners allege as follows:

INTRODUCTION

1. Petitioners, K.Y.M.C. and C.Y.M.C., are two siblings, aged seventeen (17) and eleven (11) years old, who arrived in the United States from their home country of Honduras on May 9, 2025, and were immediately detained by the Department of Homeland Security ("DHS"). DHS designated K.Y.M.C. and C.Y.M.C. as unaccompanied children and transferred them to the custody of the Office of Refugee Resettlement ("ORR").

2. K.Y.M.C. and C.Y.M.C. are still currently detained in the custody of ORR at LSSS Upbring Krause Children's Shelter in Katy, Texas. K.Y.M.C. and C.Y.M.C. have been held in ORR custody since May 10, 2025, or for 293 days. This prolonged detention is despite the fact that ORR immediately identified K.Y.M.C. and C.Y.M.C.'s biological father, [redacted], as a qualified "sponsor" residing in the United States who could receive them into his custody; and Mr. [redacted] completed numerous requirements to prove his relationship to the children and ability to provide for their physical and mental well-being, and has been entirely cooperative and communicative throughout the process.

3. K.Y.M.C. and C.Y.M.C.'s unlawful prolonged detention is the result of ORR's policies and practices regarding sponsor reunification. ORR has a statutory and regulatory responsibility to "promptly" place K.Y.M.C. and C.Y.M.C. "in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A); 45 C.F.R. §§ 410.1003(f), 410.1205(b) (family member

sponsor applications must be adjudicated within 10-14 days). To fulfill its mandate, ORR releases most unaccompanied children in ORR custody to their parents or other relatives in the United States. In this case, however, K.Y.M.C. and C.Y.M.C.'s father, Mr. [redacted], has been trying to reunify with his children for almost a year.

4. Despite ORR's legal obligation, ORR has repeatedly delayed K.Y.M.C. and C.Y.M.C.'s reunification process and failed to process Mr. [redacted]'s sponsorship application expeditiously. In addition, ORR has continued to add new requirements to the sponsorship process throughout K.Y.M.C. and C.Y.M.C.'s time in custody, which has prolonged their detention. Anytime ORR has asked Mr. [redacted] for additional information or documentation, he has immediately complied, but whenever Mr. [redacted] requests updates or actions from ORR, he is met with silence and inaction. K.Y.M.C. and C.Y.M.C.'s pro bono attorneys have also requested information from ORR on numerous occasions, and have advised ORR of the children's suffering from their prolonged detention, as has the children's federally appointed Child Advocate, but there continues to be a lack of timely communication or progress on the case. ORR's failure to act "promptly" violates K.Y.M.C. and C.Y.M.C.'s constitutional rights to due process and family integrity.

7. This petition seeks to liberate K.Y.M.C. and C.Y.M.C. from detention and reunify them with their father on the basis that their continued detention is unlawful and violates the substantive and procedural due process protections of the Fifth Amendment, the Administrative Procedure Act, the *Accardi* doctrine, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, and the Immigration and Nationality Act and its implementing regulations. K.Y.M.C. and C.Y.M.C. respectfully ask this Court to order their immediate release to the custody of Mr. [redacted] in North Carolina, or to the least restrictive community placement available.

JURISDICTION AND VENUE

8. This Court has jurisdiction under the U.S. Constitution. U.S. Const. art. I § 9, cl. 2 ("The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require.").

9. The Court also has jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C, § 1651 (the All Writs Act); 28 U.S.C. § 2241 (habeas corpus); and 5 U.S.C. § 701 (the Administrative Procedure Act).

10. This Court has additional remedial authority under 28 U.S.C. §§ 2201 and 2202 (the Declaratory Judgment Act) and Fed. R. Civ. P. 65 to grant declaratory and injunctive relief.

11. Venue is proper in the Southern District of Texas because a substantial part of the events giving rise to these claims occurred and continue to occur in this district.

12. Venue is also proper under 28 U.S.C. § 2241 because K.Y.M.C. and C.Y.M.C. are detained within this district.

PARTIES

13. Petitioners K.Y.M.C. and C.Y.M.C. are two siblings and unaccompanied children in the custody of the Office of Refugee Resettlement ("ORR"). K.Y.M.C. is seventeen years old, and C.Y.M.C. is eleven years old. They are detained at LSSS Upbring Krause Children's Shelter in Katy, Texas. K.Y.M.C. and C.Y.M.C. are trying to reunify with their father in North Carolina.

14. [redacted] is the biological father and Next Friend of Petitioners. K.Y.M.C. and C.Y.M.C. appear by and through Mr. [redacted]

15. Respondent Angie Salazar is the Acting Director of ORR, the subagency of the U.S. Department of Health and Human Services ("HHS") responsible for

overseeing the care and custody of unaccompanied minors. ORR is the government entity directly responsible for the detention of K.Y.M.C. and C.Y.M.C. As the Acting Direct of ORR, Respondent Salazar is a custodian of Petitioner, with authority to produce and release them. Respondent Salazar is sued in her official capacity.

16. Respondent Robert F. Kennedy is the Secretary of HHS, a cabinet-level department of the United States Government. ORR is a component of HHS. As the Secretary of HHS, Respondent Kennedy is a custodian of Petitioners, with authority to produce and release them. Respondent Kennedy is sued in his official capacity.

17. Respondent America Cervantes is an ORR Federal Field Specialist. Federal Field Specialist Cervantes is a government official responsible for the care and custody of K.Y.M.C. and C.Y.M.C., as well as other children who ORR has placed in the LSSS Upbring Krause Children's Shelter. In this role, Federal Field Specialist Cervantes is responsible for determining K.Y.M.C. and C.Y.M.C.'s placement and has authority to approve their release to an appropriate sponsor's care. Accordingly, Respondent Cervantes is a custodian of Petitioners, with authority to produce and release them. Respondent Cervantes is sued in her official capacity.

18. Respondent Mayra Lopez is the Senior Program Director of LSSS Upbring Krause Children's Shelter where K.Y.M.C. and C.Y.M.C. are being held at the time of this petition. As Director of LSSS Upbring Krause Children's Shelter, Respondent Lopez is a custodian of Petitioners, with authority to produce them. Respondent Lopez is sued in her official capacity.

REQUIREMENTS OF 28 U.S.C. § 2243

19. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith" unless the Petitioners are not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

20. Habeas corpus is "perhaps the most important writ known to the constitutional law...affording as it does a *swift* and imperative remedy in all cases of illegal restraint of confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1220 (9th Cir. 2000) (citation omitted).

LEGAL FRAMEWORK

The Care, Custody, and Release of Unaccompanied Immigrant Children

21. Each year, thousands of immigrant children flee violence, mistreatment, and trafficking in their home countries, to seek protection in the United States. Many of these children come from countries where gang violence, government corruption, and instability create conditions that make these regions among the most dangerous for children. According to the United Nations, nearly two-thirds of immigrant children from these regions have experienced harms that qualify them for international refugee protection. Indeed, U.S. federal law recognizes that minors are distinctively vulnerable and establishes a child-welfare framework, not a carceral one, to govern their custody and release.

22. Noncitizen children who encounter immigration officials at the U.S. border or in the interior of the United States may be designated as "unaccompanied [noncitizen] children" or "UAC" if they meet three conditions defined in the Homeland Security Act of 2002, Section 462, namely that they are: 1) under 18 years of age, 2) lacking lawful immigration status in the United States, and 3) not having a parent or legal guardian in the U.S. who is available to provide care and physical custody. *See* 6 U.S.C. § 279(g)(2). For many children apprehended and designated as UACs, they do have a parent or legal guardian in the U.S. who can care for them—and in some cases already has been caring for them—but they are detained and held in the custody of the Office of Refugee Resettlement ("ORR)" until that can be satisfactorily proven

pursuant to various ORR policies and protocols, at which point they are normally released from detention to reunify with that family member.

23. According to ORR's UAC Bureau Policy Guide, unaccompanied children in ORR custody are to be "released in a safe, efficient, manner without unnecessary delay," where such "safe and timely release must promote public safety and ensure that sponsors are able to provide for the physical and mental well-being of children."[1] In practice, however, that is no longer the case. Due to numerous novel policy and practice changes of late, detained unaccompanied children across the United States are experiencing continuous delays in being reunified with their families, which is significantly harming their mental health and wellbeing. This prolonged detention is contrary to the legal framework designed to protect these vulnerable minors, the policy rationales underlying ORR's role as their custodians in immigration custody, and the constitutional interests and due process rights of these individuals and families in the United States.

A. Statutory and Regulatory Framework

24. The care and custody of unaccompanied immigrant children is governed by a legal framework consisting primarily of two statutes, a settlement agreement that is binding on the pertinent federal agencies, and federal regulations: the Homeland Security Act of 2002, the Trafficking Victims Protection Reauthorization Act, the 1997 *Flores* Settlement Agreement, and the Foundational Rule.

25. Prior to 2002, the Office of Juvenile Affairs in the former INS was responsible for the custody of unaccompanied immigrant children in the United States. The *Flores* Settlement Agreement, originally signed by the INS in 1997, established national minimum standards for the treatment and placement of minors in immigration custody. Stipulated Settlement Agreement, *Flores v. Reno,* No. CV 84-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997) ("*Flores*

[1] Available at https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2#2.1 (last accessed Feb. 25, 2026).

Settlement"). It remains under the supervision of U.S. District Judge Dolly M. Gee in the Central District of California. *Flores v. Bondi*, No. CV 85-4544-DMG (AGRx).[2]

26. In 2002, Congress passed the Homeland Security Act ("HSA"), transferring functions of the former INS to other government entities. Pub. L. No. 107-296, 116 Stat. 2153 (2002). Specifically, the HSA transferred authority over the care and custody of unaccompanied immigrant children from the INS to ORR, housed within HHS. 6 U.S.C. § 279.

27. Congress' decision to transfer responsibility for the care and custody of unaccompanied children from the INS to ORR reflected Congress' determination that caring for children who arrive to the United States without their parent or legal guardian and immigration enforcement were incompatible roles for a single agency.[3] Within HHS, ORR is responsible for children's safety and welfare and is explicitly not a law enforcement agency. *See* Foundational Rule, 89 Fed. Reg. at 34399, 34423 ("it is not a law enforcement agency, unlike the former INS…"), 34591.

28. With strong bipartisan support, Congress then expanded protections for unaccompanied children in the Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), reaffirming Congress' intent to treat unaccompanied children differently than the manner in which adults are treated by the Department of Homeland Security ("DHS"), both in detention and in immigration proceedings. 8 U.S.C. § 1232 *et seq*.

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[2] Following the promulgation of the Foundational Rule, the *Flores* Settlement Agreement was partially terminated as to HHS. *Flores v. Garland*, 2024 WL 3467715 (C.D. Cal., June 28, 2024).

[3] *See, e.g.*, 148 Cong. Rec. S11295 (Nov. 18, 2002) (statement of Sen. Feinstein); 148 Cong. Rec. S8189 (Sept. 4, 2002) (reprinting letter from Sens. Kennedy and Brownback). *See also* 148 Cong. Rec. S5960 (Oct. 1, 2002) ("As we transfer and reshape the INS in this legislation, it is imperative to relieve the agency of its responsibility of the care and custody of unaccompanied children. Doing so would accomplish two ends: one, it would permit the INS to focus its energies, efforts, and attention on its core missions; and two, it would transfer the care and custody of these children to the Office of Refugee Resettlement, ORR, an office that is better suited and much more experienced in handling the complexities of the children's situations.")

29. The TVPRA requires federal officials who discover an unaccompanied child to transfer the child to the care and custody of HHS within 72 hours (absent exceptional circumstances). *Id.* § 1232(b)(3). The TVPRA also tasks ORR with ensuring that unaccompanied children are "promptly placed in the least restrictive setting that is in the best interest of the child." *Id.* § 1232(c)(2)(A). This is usually with a sponsor. *See, e.g.*, *Saravia v. Sessions*, 905 F.3d 1137, 1142–43 (9th Cir. 2018). Congress enacted the TVPRA specifically to facilitate the safe, speedy release and minimally restrictive placement of unaccompanied children. *See, e.g.*, 154 Cong. Rec. S10886 (daily ed. Dec. 10, 2008) (statement of Sen. Feinstein, sponsoring senator).

30. Neither the HSA nor the TVPRA make any mention of a sponsor's potential immigration status as a prerequisite to receive an unaccompanied child into their custody. Similarly, neither statute gives ORR authority to: (1) inquire into immigration status as a condition for sponsorship; (2) collect information about potential sponsors for immigration or law enforcement purposes; or (3) share potential sponsor's immigration status with law enforcement or immigration enforcement entities.

31. In 2024, ORR promulgated regulations ("The Foundational Rule") codifying the "policies, standards, and protections for [unaccompanied children], consistent with the HSA and TVPRA, and to implement the substantive requirements of the [*Flores* Settlement Agreement] as they pertain to ORR." 89 Fed. Reg. at 34385 (promulgating 45 C.F.R. §§ 410.1000 *et seq.*).

32. The Foundational Rule includes "policies and procedures regarding release, without unnecessary delay, of an unaccompanied child from ORR custody to a vetted and approved sponsor." 89 Fed. Reg. at 34439. The Foundational Rule is consistent with the agency's "strong belief that, generally, placement with a vetted and approved family member or other vetted and approved sponsor, as opposed to placement in an ORR care provider facility … is in the best interests of unaccompanied children." *Id.* In response to comments on their proposed regulations, ORR explained that "[t]he HSA and the TVPRA do not make any mention of a sponsor's potential immigration status as a prerequisite to receive an unaccompanied child into their custody and do not imbue ORR

with the authority to inquire into immigration status as a condition for sponsorship." *Id.* at 34442.

33. The Foundational Rule establishes that "ORR shall release a child from its custody without unnecessary delay" to sponsors in a specific order of preference with parents and legal guardians taking first priority and other family members following. 45 C.F.R. § 410.1201(a). As required by the regulation, sponsor suitability assessments must include various investigations and background checks, and "may include" background checks "based on fingerprints for some potential sponsors and adult residents of the potential sponsor's household." *Id.* § 410.1201(c). Furthermore, "ORR shall adjudicate the completed sponsor application of a parent or legal guardian; brother, sister, or grandparent; or other close relative who has been the child's primary caregiver within 10 calendar days . . . absent an unexpected delay". *Id.* § 410.1205(b). Other completed sponsor applications by close relatives who were not the child's primary caregiver must be adjudicated within 14 days, absent unexpected delay. *Id.* § 410.1205(c).

34. As part of its sponsor suitability process, ORR may require "verification of the employment, income, or other information provided by the potential sponsor as evidence of the ability to support the child." 45 C.F.R. § 410.1202(c). In the Preamble to the Foundational Rule, ORR stated that although employment is "a permissible consideration as part of the suitability assessment[,] . . . ORR will not deny an otherwise qualified sponsor solely on the basis of low income or employment status." 89 Fed. Reg. at 34446.

35. ORR's subregulatory framework is laid out in the UC Policy Guide. The UC Policy Guide was first published publicly in 2015 and is available on ORR's website. Office of Refugee Resettlement, *Unaccompanied Alien Children Bureau Policy Guide* (2025) ("Policy Guide"), https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide. The Policy Guide governs the placement, care, and release of unaccompanied children in ORR custody, consistent with ORR's legal authorities. Policy Guide, Introduction.

36. Section 2 of the guide sets out ORR's policies with respect to securing "[s]afe and timely release" of unaccompanied children "to parents, guardians, relatives, or individuals designated by the child's parents, referred to as 'sponsors.'" Policy Guide, § 2.1. Under the Policy Guide, "[s]afe and timely release must promote public safety and ensure that sponsors are able to provide for the physical and mental well-being of the children." *Id.* The Policy Guide describes the sponsor identification and application process in detail, including specific ORR requirements prior to application adjudication and approval. *Id.* at §§ 2.2-2.7.

B. Legal and Factual Background of Prolonged Detention of Unaccompanied Immigrant Children

37. The substantive component of due process forbids the Government from infringing in any way upon fundamental liberty interests unless the infringement is narrowly tailored to serve a compelling state interest. *United States v. Salerno*, 481 U.S. 739, 749 (1987). In the immigration context, whether the infringement is narrowly tailored to serve a compelling governmental interest is determined by evaluating whether the infringement on liberty: 1) is impermissible punishment or permissible regulation; and 2) is excessive in relation to the regulatory goal Congress sought to achieve. *See id.* at 747; *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

38. "[T]he 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 narrower than that of an adult. *In re Gault*, 387 U.S. 1, 13 (1967) ("neither the Fourteenth Amendment nor the Bill of Rights is for adults alone"); *see also Reno v. Flores*, 507 U.S. 292, 316 (1993) (O'Connor, J. and Souter, J., concurring), quoting *Gault*, 387 U.S. at 13 ("[The Supreme Court] ha[s] consistently [...] rejected the assertion that 'a child, unlike an adult, has a right 'not to liberty but to custody.'"). Further, "incarceration is rarely if ever a necessary condition for raising the living standards of those capable of surviving safely in freedom, on their own or with the help of family or friends." *O'Connor v. Donaldson*, 422 U.S. 563, 575 (1975). Therefore minors, like adults, have a

substantial liberty interest "in avoiding unjustified physical restraint." *Lucas R. v. Becerra*, 2022 WL 2177454, at *14 (C.D. Cal. Mar. 11, 2022). *See also, e.g.*, *Parham v. J.R.*, 442 U.S. 584, 600 (1979).

39. The serious harm of prolonged detention of unaccompanied children, including that caused by unnecessary/arbitrary additional vetting requirements, is well documented. *See Lucas R.*, 2022 WL 2177454 at *17 ("Numerous child welfare experts have expounded on the harm that detention causes children, particularly young children" and "[i]t is undisputed that being separated from family members is inimical to a child's well-being."). In 2018 in similar circumstances, ORR policy changes caused unaccompanied children's length of custody in ORR to increase significantly, with children spending months in congregate care designed to hold children for only a few weeks. *See, e.g.*, Dep't of Health and Hum. Servs., Office of the Inspector Gen., *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody*, 13 (Sept. 2019), https://perma.cc/YLT7-R3HP ("HHS OIG Report") ("[C]hildren's average length of stay in ORR custody increased markedly after ORR implemented the new fingerprinting policy in June 2018", from 61 days in June 2018 to 93 days in November 2018 and then decreased after ORR ended fingerprinting requirements for adult household members and then for parents, reaching 48 days in April 2019).

40. The then-Assistant Secretary for the Administration for Children and Families later conceded that the policy did not "add[] anything to the protection and safety of the children."[4] Extended lengths of stay in ORR custody harmed children's mental health and wellbeing. *See, e.g.*, HHS OIG Report, 13 (After implementing new restrictive reunification policies, "[ORR f]acilities reported that it became more difficult to identify sponsors willing to accept children after the new fingerprinting requirements were implemented, which delayed placing children with sponsors, adding further stress and

[4] *See* John Burnett, *Several Thousand Migrant Children In U.S. Custody Could Be Released Before Christmas*, NPR (Dec. 18, 2018), available at https://perma.cc/6WHS-BNR6; *J.E.C.M. v. Lloyd,*, 352 F. Supp. 3d 559, 583 (E.D. Va. 2018) (citing amicus brief filed by Human Trafficking Legal Center).

uncertainty."); *see also id.* at 12–13 ("According to facility staff, longer stays resulted in higher levels of defiance, hopelessness, and frustration among children, along with more instances of self-harm and suicidal ideation.").

41. The constitutional right to family integrity or to familial association is [also] well established." *Rosenbaum v. Washoe Cty.*, 663 F.3d 1071, 1079 (9th Cir. 2011); *see also Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (holding that parents and children have a well-elaborated constitutional right to live together without government interference); *Ching v. Mayorkas*, 725 F.3d 1149, 1157 (9th Cir. 2013) ("The right to live with and not be separated from one's immediate family is 'a right that ranks high among the interests of the individual' and that cannot be taken away without procedural due process."); *D.B. v. Cardall*, 826 F.3d 721, 740 (4th Cir. 2016) (children "enjoy a familial right to be raised and nurtured by their parents") (internal quotation marks omitted); *Beltran v. Cardall*, 222 F. Supp. 3d 476, 482 (E.D. Va. 2016) ("It is beyond dispute that [a mother's] right to the care and custody of her son – and [a son's] reciprocal right to his mother's care . . . is deserving of the greatest solicitude.") (internal quotation marks and citation omitted); *Jordan v. Jackson*, 15 F.3d 333, 343 (4th Cir. 1994); *see also Smith v. Org. of Foster Families for Equality & Reform*, 431 U.S. 816, 845 (1977) ("the liberty interest in family privacy has its source, and its contours are ordinarily to be sought...in intrinsic human rights."); *Hodge v. Jones*, 31 F.3d 157, 163 (4th Cir. 1994) (the "sanctity of the family unit is a fundamental precept firmly ensconced in the Constitution"); *Angelica S. v. U.S. Dep't. of Health and Hum. Svcs.*, 786 F.Supp.3d 158, 175 ("Courts have found that family separation and prolonged detention qualify as irreparable injury.") (citing *Jacinto-Castanon de Nolasco*, 319 F. Supp. 3d 491, 502 (D.D.C. 2018); *Andrieu v. Ashcroft*, 253 F.3d 477, 484 (9th Cir. 2001) (en banc)). *See also*, *Ms. L. v. U.S. ICE*, 310 F.Supp.3d 1133 (S.D. Cal. June 26, 2018) (finding likely substantive due process violation stemming from "zero tolerance" policy of family separation).

42. Numerous courts have also held that a child's right to familial association is not limited to parents. *See Moore v. City of East Cleveland*, 431 U.S. 494, 504 (1977) ("The tradition of uncles, aunts, cousins, and especially grandparents

sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition."); *J.E.C.M. v. Lloyd*, 352 F. Supp. 3d 559, 585 (E.D. Va. 2018) (rejecting argument that child's interest in family unity is unique to parents, and finding "siblings, aunts or uncles, grandparents, or first cousins" are family "captured in ORR's second-level category of would-be sponsors" and also "constitutionally significant"); *Aristotle P. v. Johnson*, 721 F. Supp. 1002, 1006 (N.D. Ill. 1989) (children have "constitutionally protected right to associate with their siblings"); *See Smith*, 431 U.S. at 843 ("biological relationships are not [the] exclusive determina[nt] of the existence of a family")..

43. Longstanding Supreme Court precedent establishes that when a government action deprives an individual of a fundamental constitutional interest, that individual is entitled to procedural due process consisting of notice and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306 (1950). Furthermore, "'significant' and 'unexplained delay[s] in responding to a [a proposed sponsor's] unification request' violate due process irrespective of other procedural defects." *Lucas R. v. Becerra*, 2022 WL 2177454, at *27 (C.D. Cal. Mar. 11, 2022) (citing *Santos v. Smith*, 260 F. Supp. 3d 598, 613-14 (W.D. Va. 2017).

44. In accordance with these procedural safeguards, ORR has a statutory and regulatory responsibility to determine the safety and suitability of [redacted] without unnecessary delay. Based on the facts provided below, K.Y.M.C. and C.Y.M.C.'s sponsor is safe and qualified, and ORR has a duty to grant Mr. [redacted]'s reunification request and place K.Y.M.C. and C.Y.M.C. in the least restrictive setting that is in their best interests, with their father.

FACTUAL ALLEGATIONS

A. K.Y.M.C. and C.Y.M.C. are unaccompanied children with a vetted sponsor capable of providing for their physical and mental well-being.

45. K.Y.M.C. was born on [redacted], in Honduras, and is currently seventeen years old. C.Y.M.C. was born on [redacted], in Honduras, and is currently eleven years old. Both K.Y.M.C. and C.Y.M.C. have always had a close and loving relationship with their biological father, [redacted]

46. K.Y.M.C. and C.Y.M.C. came to the United States in May 2025 with their mother, with the goal of reunifying with their father in North Carolina. During their journey from Honduras, K.Y.M.C. and C.Y.M.C. became separated from their mother. She was deported soon thereafter.

47. K.Y.M.C. and C.Y.M.C. were apprehended by DHS near the U.S.-Mexico border and transferred to the custody of ORR on May 10, 2025, after being designated as unaccompanied children. They were sent to the LSSS Upbring Krause Children's Shelter, where they have remained since that day.

48. DHS and ORR immediately identified [redacted] as the biological father and potential sponsor of K.Y.M.C. and C.Y.M.C. and began the reunification process soon after their arrival into ORR custody.

49. During their time in ORR custody, K.Y.M.C. and C.Y.M.C. have appeared in Immigration Court multiple times, and their proceedings are ongoing. K.Y.M.C. and C.Y.M.C. are receiving pro bono legal assistance from the nonprofit organization of one of the undersigned counselors, the Galveston-Houston Immigrant Representation Project ("GHIRP").

B. Respondents refuse to promptly release K.Y.M.C. and C.Y.M.C. to their vetted sponsor, [redacted], in K.Y.M.C. and C.Y.M.C.'s best interests.

50. Mr. [redacted] has complied with numerous requirements of the ORR sponsorship process, including DNA testing, fingerprinting, and multiple background checks. He has provided proof of his biological relationship to

his children, as demonstrated by their Honduran birth certificates, as well as proof of his income and current address. He has also provided information on other household members as required by ORR policy. He has been forthcoming, communicative, and cooperative with ORR and the LSSS Upbring Krause Children's Shelter staff throughout this process that has lasted more than nine months.

51. Mr. [redacted] has also maintained constant communication with K.Y.M.C. and C.Y.M.C. during their time in ORR custody, and he has been a key source of support for them as they contend with detention fatigue and face continued uncertainty as to their futures.

52. While in ORR's custody, K.Y.M.C. and C.Y.M.C. have been deprived of their liberty. They are restricted in their movement and activities. Progress towards their goals – such as furthering their education – have been put to the side. They have had precious moments taken from them, such as birthdays and holidays with their family. All of this has had a profound impact on their mental health and wellbeing.

53. ORR has continued to add new requirements to the sponsorship process throughout K.Y.M.C. and C.Y.M.C.'s time in custody, which has prolonged their detention. Anytime ORR has asked Mr. [redacted] for additional information or documentation, he has immediately complied. By contrast, whenever Mr. [redacted] has requested updates from ORR, or inquired as to the delay in receiving his children, he has been met with silence and inaction.

54. K.Y.M.C. and C.Y.M.C.'s pro bono attorneys have also requested information from the ORR Federal Field Specialists on numerous occasions over the past several months, including advising them of the continued lack of progress and the children's suffering from their prolonged detention, but they have yet to get a response.

55. Starting January 21, 2026, ORR implemented a new requirement that a "discretionary" home study *must* be conducted in all circumstances where a home study is not already mandatory by law or ORR policy (i.e., in all cases), in other words a *mandatory-discretionary* home study. K.Y.M.C. and

C.Y.M.C.'s case did not require a home study prior to this policy change, as they did not meet criteria for a mandatory home study under the Trafficking Victims Protection Reauthorization Act (8 U.S.C. § 1232(c)(3)(B)) or the ORR UAC Bureau Policy Guide (Section 2.4.2), as there were no safety concerns about their sponsor, no red flags came up in the background checks, and no history of abuse, maltreatment, or neglect. ORR must act to initiate the home study process; however, there has been no considerable progress on Mr. [redacted]s case in over a month.

56. Some of the new ORR requirements have exemptions available for "Category 1" sponsors, which include parents like Mr. [redacted] This includes one of the newest requirements, announced via email on January 26, 2026 that sponsors and alternative caregivers obtain an Individual Tax Identification Number (ITIN) if they do not have a Social Security Number. In the case at hand, an attorney for K.Y.M.C. and C.Y.M.C. requested an exemption to this requirement for Mr. [redacted] noting that the process to obtain an ITIN can take multiple months and cost hundreds of dollars; however, the ORR Federal Field Specialists did not reply to this communication.

C. K.Y.M.C. and C.Y.M.C.'s federally appointed Child Advocate has recommended reunification with Mr. [redacted]

57. On January 29, 2026, ORR approved the appointment of a Child Advocate from the Young Center for Immigrant Children's Rights for both K.Y.M.C. and C.Y.M.C., pursuant to the Trafficking Victims Protection and Reauthorization Act ("TVPRA"). *See* 8 U.S.C. § 1232(c)(6)(A). The role of the TVPRA-appointed Child Advocate resembles that of a guardian *ad litem* in state court, as they assess the best interests of particularly vulnerable unaccompanied children, like K.Y.M.C. and C.Y.M.C., and develop determinations regarding their custody, detention, release, legal representation, relief from removal, and safe repatriation.

58. On February 23, 2026, K.Y.M.C. and C.Y.M.C.'s Child Advocate, Brenda Reyes, submitted a Best Interests Determination in Support of Reunification to ORR. *See* **Exhibit 1**. Ms. Reyes recommended as follows:

> "**To honor the children's wishes, ensure their placement in the least restrictive setting, preserve family integrity, and uphold Mr. [redacted]s parental rights, the siblings should be released to their biological father without further delay. Mr. [redacted] has fully satisfied government sponsorship requirements and is ready to provide a safe, stable, and loving home.**"

Id. at 1-2 (emphasis in original).

59. K.Y.M.C. and C.Y.M.C.'s Child Advocate also confirmed the lengths that Mr. [redacted] has gone to in order to satisfy ORR that he is a capable and fit caregiver for his children, stating:

> "Mr. [redacted] has provided ORR with the required documentation to support his sponsorship application and complied with requirements as set forth in ORR Policy. [C.Y.M.C.] and [K.Y.M.C.] have clearly expressed their strong desire to reunify with Mr. [redacted] and there are no safety concerns for [C.Y.M.C.] and [K.Y.M.C.]'s reunification with their father."

Id. at 1.

60. Ms. Reyes also reiterated that federal, state, and international law demands that ORR immediately release K.Y.M.C. and C.Y.M.C. from custody, stating:

> "[C.Y.M.C.] and [K.Y.M.C.]'s best interests require their immediate release to their biological father. This outcome respects the sibling's expressed wishes, their right to family unity, and their father's parental rights and is in accordance with the relevant law, regulations, and policy given the absence of safety concerns and the family's full compliance with ORR policy requirements."

Id. at 5.

61. K.Y.M.C. and C.Y.M.C.'s Child Advocate additionally questioned ORR's insistence that Mr. [redacted] be required to obtain an ITIN in order to receive his children into his custody, noting that this requirement is not supported by the UAC Policy Guide. *Id.* at 6. Further, Ms. Reyes concluded that this requirement, as well as the new requirement that the sponsor attend

an identification verification appointment in person, should be waived in this case, pursuant to exceptions that are available for parent sponsors like Mr. [redacted] *Id.* at 6-7. She further stated:

> "Given the children's length of stay, the father's proactive efforts to comply with the sponsorship requirements, and the father's ability to provide a safe environment, we believe it's in the sibling's best interest for ORR to grant exceptions [to] the in-person ID verification and the ITIN requirements in order to promptly reunify the children with their biological father."

Id. at 7.

62. Finally, the Best Interest Determination noted that K.Y.M.C. is going to turn 18 years old later this year, at which time ORR will no longer be able to hold her at LSSS Upbring Krause Children's Shelter with her younger brother, thus creating the possibility of further family separation and trauma for these children, particularly after being separated from their mother last year during the immigration process. This is significant as Ms. Reyes notes that "the siblings have leaned on each other as a source of support and familiarity" during their time in ORR custody, frequently requesting to spend time together and "talking through negative feelings together, and uplifting each other's spirits." *Id.* at 2.

63. She concludes, "If separated, this could be incredibly detrimental to the well-being and mental health of each. Notably, [C.Y.M.C.'s] sole source of daily familial comfort within the shelter will be ripped from his life abruptly." *Id.* at 2-3.

64. As there has been no significant progress on K.Y.M.C. and C.Y.M.C.'s reunification with their father, and they now face the prospect of being separated from each other later this year, if Mr. [redacted]s sponsorship application is not timely adjudicated by ORR before K.Y.M.C.'s eighteenth birthday, this family feels that they have no choice but to bring this habeas action requesting a federal judge order their release in accordance with well-established law, policy, and procedure and in promotion of these children's best interests and this family's constitutional rights.

CLAIMS FOR RELIEF

CLAIM I

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OF THE CONSTITUTION (SUBSTANTIVE DUE PROCESS) AND 8 U.S.C. § 1231(a)(6); ADMINISTRATIVE PROCEDURE ACT 5 U.S.C. §§ 702, 706.

65. Petitioners repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

66. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

67. Petitioners have a fundamental interest in liberty and being free from official restraint. Because K.Y.M.C. and C.Y.M.C.'s removal is not reasonably foreseeable and there is no other justification for their detention, their detention is neither authorized by 8 U.S.C. § 1231(a)(6) nor related to any legitimate government interests, in violation of the substantive due process protections of the Fifth Amendment.

CLAIM II

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OF THE CONSTITUTION (PROCEDURAL DUE PROCESS); ADMINISTRATIVE PROCEDURE ACT 5 U.S.C. §§ 702, 706.

68. Petitioners repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

69. The procedural due process guarantee of the Fifth Amendment requires that individuals be provided notice and an opportunity to be heard before being deprived of liberty or property interests. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

70. A child's interest in being free from confinement is no narrower than that of an adult. In re Gault, 387 U.S. 1, 13 (1967); Reno v. Flores, 507 U.S. 292, 316 (1993) (O'Connor, J. and Souter J., concurring) ("[The Supreme Court] ha[s] consistently [...] rejected the assertion that 'a child, unlike an adult, has a right 'not to liberty but to custody.'"). This includes the right of a child "to be raised and nurtured by their parents." D.B. v. Cardall, 826 F.3d 721, 740 (4th Cir. 2016) (citations omitted); Troxel v. Granville, 530 U.S. 57, 65 (2000) ("[T]he interest of parents in the care, custody, and control of their children [] is perhaps the oldest of the fundamental liberty interests recognized by [the Supreme] Court.").

71. The Due Process Clause entitles K.Y.M.C. and C.Y.M.C. to meaningful process assessing whether their detention is justified. K.Y.M.C. and C.Y.M.C.'s prolonged and continued detention without an opportunity to contest their detention in front of a neutral adjudicator provides insufficient process and violates the Due Process Clause of the Fifth Amendment of the Constitution.

CLAIM III

VIOLATION OF THE FOURTH AMENDMENT OF THE CONSTITUTION; ADMINISTRATIVE PROCEDURE ACT 5 U.S.C. §§ 702, 706.

72. Petitioners repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

73. The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. amend. IV. The Supreme Court has consistently recognized that immigration arrests and detentions are "seizures" within the meaning of the Fourth Amendment. *See INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that deportation proceedings are civil, but the Fourth Amendment still applies to the "seizure" of the person).

CLAIM IV

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT 5 U.S.C. §§ 702, 706

74. Petitioners repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

75. Under the Administrative Procedure Act, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

76. Respondents' detention of K.Y.M.C. and C.Y.M.C. is arbitrary and capricious, not in accordance with the law, and contrary to constitutional right because their reunification with their father is viable, and there is no other justification for their detention.

77. Respondents failed to articulate a reasoned explanation for their decision in light of all available evidence and failed to consider all the aspects of the problem as well as obvious, less-restrictive alternatives to custody.

78. Additionally, Respondents acted arbitrarily, capriciously, and contrary to law by disregarding the controlling child-welfare framework governing custody and release of immigrant children. Congress, through the Homeland Security Act and the TVPRA, requires that unaccompanied children be maintained in the least restrictive setting appropriate to their needs and that the government undertake prompt and continuous efforts toward placement with qualified family sponsors. *See* 6 U.S.C. § 279(b)(1)(C)–(D); 8 U.S.C. § 1232(c)(2). Respondents' continued detention of K.Y.M.C. and C.Y.M.C. violate these statutory requirements.

CLAIM V

VIOLATION OF THE *ACCARDI* DOCTRINE

79. Petitioners repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

80. When the government has promulgated "[r]egulations with the force and effect of law," those regulations "supplement the bare bones" of federal statutes, such that the agencies are bound to follow their own "existing valid regulations." *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266, 268 (1954). The Accardi doctrine also obligates agencies to comply with procedures set out in their operative manuals and binding guidance. *See Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (finding that an agency is obligated to comply with procedural rules outlined in its internal manual).

81. Respondents have failed to comply with ORR policies designed to promote K.Y.M.C. and C.Y.M.C.'s safe, timely release to their sponsor; have failed to expeditiously process and advance Mr. [redacted]'s sponsorship application in accordance with the UAC Bureau Policy Guide; and have failed to safeguard the health and wellbeing of K.Y.M.C. and C.Y.M.C. in detention, intentionally and callously prolonging their time in ORR custody and preventing their reunification with their biological father.

82. K.Y.M.C. and C.Y.M.C. have no adequate remedy at law.

CLAIM VI

RELEASE PENDING ADJUDICATION

83. Petitioners repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

84. Pursuant to *Mapp v. Reno*, this Court has the "inherent authority" to set bail pending the adjudication of a habeas petition when the petition has raised (1) substantial claims and (2) extraordinary circumstances that (3) "make the grant of bail necessary to make the habeas remedy effective." 241 F.3d 221, 226 (2d Cir. 2001).

85. K.Y.M.C. and C.Y.M.C. present numerous substantial constitutional and statutory claims challenging their detention.

86. K.Y.M.C. and C.Y.M.C. have demonstrated extraordinary circumstances: they are minor children, and they pose no flight risk; they have a vetted family member sponsor—a biological parent—awaiting and pleading for their release, and their sponsor has complied with all government requirements;

thus, their continued detention serves no lawful purpose and violates both statutory and constitutional protections.

87. Given these extraordinary circumstances and the substantial claims presented, K.Y.M.C. and C.Y.M.C. respectfully request that this Court either release them pending adjudication of this habeas petition or order the government to demonstrate that its detention of K.Y.M.C. and C.Y.M.C. is justified.

CLAIM VII

VIOLATION OF THE *FLORES* SETTLEMENT AGREEMENT/THE FOUNDATIONAL RULE, 45 C.F.R. §§ 410.1000 *et seq.*

88. Petitioners repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

89. The Foundational Rule incorporates the duty to promptly place K.Y.M.C. and C.Y.M.C. in the least restrictive setting that is in their best interests under the Foundational Rule. 45 C.F.R. § 410.1003(f). ORR is also required to make and record prompt and continuous efforts towards a child's release. *Id.* § 410.1203(a).

90. Respondents' failure to qualify K.Y.M.C. and C.Y.M.C.'s sponsor, Mr. [redacted] as capable and willing to care for K.Y.M.C. and C.Y.M.C., despite Mr. [redacted] being a fit sponsor; Respondents' failure to transfer K.Y.M.C. and C.Y.M.C. to the custody of Mr. [redacted] and Respondent's continued incarceration of K.Y.M.C. and C.Y.M.C. all constitute violations of the Foundational Rule.

CLAIM VII

VIOLATION OF SECTION 235 OF THE TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT, 8 U.S.C. § 1232

91. Petitioners repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

92. Respondents have a non-discretionary duty to promptly place K.Y.M.C. and C.Y.M.C. in the least restrictive setting that is in their best interest under the TVPRA. 8 U.S.C. § 1232(c)(2)(A).

93. Respondents have failed to act promptly.

94. Respondents have arbitrarily and unlawfully failed to place K.Y.M.C. and C.Y.M.C. in the least restrictive setting that is in their best interest.

95. Respondents' failure to release K.Y.M.C. and C.Y.M.C. and transfer them to the custody of their sponsor Mr. [redacted] in North Carolina, constitutes a violation of Respondents' non-discretionary duties under the TVPRA.

PRAYER FOR RELIEF

WHEREFORE, Petitioners K.Y.M.C. and C.Y.M.C. respectfully request that this Court:

A. Grant the Petition for Writ of Habeas Corpus and order the immediate release of Petitioners K.Y.M.C. and C.Y.M.C. from the custody and control of Respondents;

B. In the alternative, hold an immediate bond hearing at which Respondents must demonstrate by clear and convincing evidence that Petitioner's detention is justified and that Petitioners pose a flight risk or danger to the community;

C. Order that Respondents shall immediately cease holding K.Y.M.C. and C.Y.M.C. in detention and either (a) release them to the custody of their sponsor, Mr. [redacted]; or (b) place them in the least restrictive community setting available in or near North Carolina; or (c) transfer them to North Carolina pending resolution of this habeas petition;

D. Order that Respondents shall not transfer Petitioners outside of the Southern District of Texas for the duration of this proceeding pending adjudication of this petition;

E. Declare that Petitioners' detention is unlawful under the Fifth Amendment, Fourth Amendment, the Administrative Procedure Act, the *Accardi* doctrine, the Trafficking Victims Protection Reauthorization Act, and the Immigration and Nationality Act;

F. Award such other and further relief as this Court deems just, proper, and equitable.

VERIFICATION

Pursuant to 28 U.S.C. § 2242, the undersigned hereby verifies under oath that Petitioners K.Y.M.C. and C.Y.M.C., by and through their undersigned counsel, have carefully reviewed the facts and legal arguments set forth in the above Petition for Writ of Habeas Corpus and Complaint, and that the allegations contained herein are true and correct to the best of their knowledge, information, and belief.

Dated: February 27, 2026

Respectfully submitted,

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Pro Bono Counsel for Petitioners

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS CORPUS CHRISTI DIVISION

K.Y.M.C. and C.Y.M.C., a minor, by and through their next friend, [redacted]

Petitioners,

v.

ROBERT F. KENNEDY, JR., et al.,

Respondents

Case No. 4:26-cv-1656

INDEX OF EXHIBIT

Exhibit 1	Child Advocate Best Interest Determination in Support of Reunification