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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

K.A.P.L. by and through next of kin, [redacted] Petitioner, v. **ANGIE SALAZAR**, in her official capacity as Acting Director of the Office of Refugee Resettlement (ORR), **AMERICA CERVANTES,** in her official capacity as Federal Field Specialist, Office of Refugee Resettlement (ORR), **ANTONIO GONZALEZ**, in his official capacity as the Federal Field Specialist (FFS) Supervisor within the Office of Refugee Resettlement, **GUADALUPE DELGADO,** in her official capacity as the Director for Maryville Academy San Juan Diego, Respondents.	Case No. 26-cv-2477 **PETITION FOR WRIT OF HABEAS CORPUS, MANDAMUS RELIEF AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

This is a petition for a writ of habeas corpus filed pursuant to 8 U.S.C. § 2241 and the Administrative Procedures Act, 5 U.S.C. §701, *et seq.*, on behalf of K.A.P.L., a native and citizen of Cuba, seeking relief to remedy his unlawful and prolonged detention by Respondents. This petition for a writ of mandamus is filed pursuant to 28 U.S.C. § 1361 and the Administrative Procedure Act, 5 U.S.C. §§ 555(b) and 702, on behalf of K.A.P.L. to remedy

their continued unlawful and prolonged detention by Respondents. Petitioner is currently in ORR detention and seeks immediate release to his mother, [redacted]

CUSTODY

1. Petitioner is in the physical custody of Respondents SALAZAR, in her official capacity as Acting Director of the Office of Refugee Resettlement (ORR); CERVANTES, in her official capacity as Federal Field Specialist (FFS) with the Office of Refugee Resettlement; GONZALEZ, in her official capacity as the Federal Field Specialist Supervisor (FFSS) with the Office of Refugee Resettlement; and DELGADO, in her official capacity as Director of Maryville Academy San Juan Diego. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

2. This action arises under the Constitution of the United States.

3. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Fifth Amendment to the United States Constitution (Due Process Clause), 28 U.S.C. § 1331, as they arise under federal statutes, 28 U.S.C. § 2201 (Declaratory Judgment Act); 28 U.S.C. § 2241 (habeas corpus), and 28 U.S.C. § 1361 (writ of mandamus).

4. This Court has jurisdiction under 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties of the United States.

5. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All-Writs Act, 28 U.S.C. § 1651.

VENUE

6. Venue is proper because as of the filing of this Petition, Petitioner is detained at Maryville Academy San Juan Diego, an ORR Detention Center in Desplaines, Illinois, which is within the jurisdiction of this District.

7. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District and Petitioner resides in this District and no real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

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

9. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "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 or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

10. Petitioner K.A.P.L. is a 13-year-old child and citizen of Cuba. In November 2025, Petitioner entered the United States and encountered immigration. DHS classified Petitioner as an unaccompanied minor (UAC) pursuant to 6 U.S.C. § 279. ORR has detained Petitioner in a

juvenile detention facility since on or about November 16, 2025. Petitioner is in the custody, and under the direct control, of Respondents and their agents at Maryville Academy San Juan Diego in Desplaines, Illinois. Petitioner is currently diagnosed with attention deficit hyperactivity disorder (ADHD) and receives medication.

11. [redacted] ("Mother" or "Sponsor") is the biological mother of Petitioner and is the individual applying to ORR to be Petitioner's Sponsor and have Petitioner released to her custody. Pursuant to ORR Rule 2.2.1., [redacted] is a "Category 1: Parent or legal guardian." *See* ORR Rule 2.2.1 - Identification of Qualified Sponsors. Petitioner's Mother is also a Lawful Permanent Resident of the United States.

12. Respondent DELGADO is sued in her official capacity as the Director of Maryville Academy San Juan Diego in Desplaines, Illinois (Maryville). Maryville is the facility in which Petitioner is being held and contracts with ORR to detain children in the custody of ORR.

13. Respondent CERVANTES is sued in her official capacity as an ORR Federal Field Specialist (FFS). Federal Field Specialists are the government officials responsible for the care and custody of children in ORR facilities. In this role, FFS Cervantes is responsible for determining Petitioner's placement and has authority to approve their release to an appropriate sponsor's care. Respondent is a legal custodian of Petitioner.

14. Respondent GONZALEZ is sued in his official capacity as an ORR Federal Field Specialist Supervisor (FFSS). Federal Field Specialist Supervisors are government officials responsible for the care and custody of children in ORR facilities and supervise Federal Field Specialists. In this role, FFSS Gonzalez is responsible for determining Petitioner's placement and has authority to approve their release to an appropriate sponsor's care. Respondent is a legal custodian of Petitioner.

15. Respondent SALAZAR is the Acting Director of ORR, the component of the U.S. Department of Health and Human Services (HSS) responsible for implementing HSS's obligations to unaccompanied minors who are immigrants. ORR is the government entity directly responsible for the detention of Petitioner and has the authority to release Petitioner. Respondent Salazar is sued in her official capacity. Respondent is a legal custodian of Petitioner.

LEGAL FRAMEWORK

A. TVPRA, *Flores* Settlement, CFR and the Foundational Rule

16. 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.

17. The *Flores* Settlement Agreement arose from a lawsuit filed by a group of immigrant children challenging their detention and seeking to be released to family members and/or sponsors within the United States. *See Flores v. Sessions*, 862 F.3d 863, 869 (9th Cir. 2017) (discussing the history of the Flores litigation); *see also Flores v. Sessions*, Case No. CV 85-4544-DMG (C.D. Cal., July 9, 2018) (affirming the terms of the Flores Settlement Agreement). In 1997, the plaintiff children entered into a consent decree with the federal government that created a nationwide policy governing the custody and release of immigrant children by immigration authorities that applies to this case. *Flores v. Reno*, No. CV 85-4544, Settlement Agreement ("Flores Settlement Agreement"). Among other things, the Agreement requires: (a) release without unnecessary delay, (b) release to an adult caregiver, with parents, legal guardians, and

other family members given priority, and (c) placement in the "least restrictive setting" appropriate to the minor's needs. *Flores* Settlement Agreement, ¶¶ 11, 14.

18. At the time of the Flores Settlement Agreement, a single agency – the Immigration and Naturalization Service (INS) – administered the custody, detention, and deportation of immigrant children. In 2002, Congress passed the Homeland Security Act (HSA), which abolished the INS, created a new Department of Homeland Security, and transferred all functions related to the care and custody of unaccompanied immigrant children to ORR, a sub-department of the Department of Health and Human Services (HHS). *See* Pub. L. 107-296, 116 Stat. 2153 (Nov. 25, 2002). Section 462 of the HSA extended the key terms of the *Flores* Settlement Agreement to all unaccompanied immigrant children, including the requirement that ORR place such children in the least restrictive setting. *Id.* Specifically, 45 C.F.R. § 410, "Care and Placement of Unaccompanied Children," promulgated under the authority of section 462 of the Homeland Security Act of 2002 and section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), see 8 U.S.C. 1232, provides that UACs shall be in the care and custody of ORR and that ORR shall place UACs in the "least restrictive setting that is in the best interest of the child." 45 C.F.R. § 410.1003(f). Therefore, ORR has the statutory obligation to act in the best interest of UACs.

19. 6 U.S.C. §279(b)(1)(B) further provides that ORR is responsible for "ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of [UACs]."

20. In 2008, Congress further strengthened protections for unaccompanied children through the Trafficking Victims Protection Reauthorization Act ("TVPRA"). *See* Pub. L. 110-457, 122 Stat. 5044 (Dec. 23, 2008). The TVPRA requires federal officials to screen these

unaccompanied children for certain vulnerabilities, including whether they are victims of trafficking and whether they fear persecution in their home countries. *See* 8 U.S.C. § 1232(a)(4). The TVPRA also enacted procedures for ensuring "safe and secure placements" for these children. *See* 8 U.S.C. § 1232(c)(1). Like the *Flores* Settlement Agreement, the TVPRA mandates that an unaccompanied child "shall be promptly placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A).

21. In accordance with these Congressional procedural safeguards, ORR has a statutory responsibility to grant sponsor's reunification request and place children in the least restrictive setting that is in their best interests.

22. The *Flores* Settlement Agreement (FSA), Homeland Security Act, and TVPRA provide ORR multiple placement options for unaccompanied children. Paragraph 14 of the Flores Settlement Agreement requires in relevant part:

> Where the INS [ORR] determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others, the INS [ORR] shall release a minor from its custody without unnecessary delay, in the following order of preference, to:
>
> a. a parent
> b. a legal guardian
> c. an adult relative (brother, sister, aunt, uncle, or grandparent);
> d. an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in a declaration signed under penalty of perjury before an immigration or consular officer....

See also 8 U.S.C. §§ 1232(c)(2)(A), 1232(c)(3) (codifying the Flores Settlement Agreement).

23. In 2024, HHS published the Foundational Rule which sets standards for the placement, care and services provided to UACs (45 C.F.R. § 410.1100-1109) and for the release of UACs from ORR custody to vetted sponsors (45 C.F.R. §410.1200-1210). The regulations require that UACs "shall be treated with dignity, respect, and special concern for their particular

vulnerability". 45 C.F.R. § 410.1003(a). The Foundational Rule recognizes and incorporates the *Flores* Settlement Agreement including "establishing a general policy favoring release of unaccompanied minor children where it is determined that detention of the unaccompanied child is not required either to secure the child's timely appearance for immigration proceedings or to ensure the unaccompanied child's safety or that of others." Foundational Rule at ¶¶ 12A, 14.

24. 45 C.F.R. § 410.1201 provides that, "when ORR determines that the detention of the unaccompanied child is not required either to secure the child's timely appearance before DHS or the immigration court, or to ensure the child's safety or that of others, ORR shall release a child from its custody without unnecessary delay…"

25. 45 C.F.R. §410.1202 provides provisions for determining "sponsor suitability" which, in relevant part, are:

a. All sponsors shall complete an application obtained from the facility or ORR. 45 C.F.R. §410.1202(a).

b. A suitability assessment which includes a review of the application, verification of the sponsor's identity, physical environment and relationship as well as a finding that the sponsor has not engaged in an activity that would indicate a potential risk to the child. 45 C.F.R. §410.1202(b).

c. The suitability assessment shall also include a determination that the sponsor is capable of providing for the child's physical and mental well-being. 45 C.F.R. §410.1202(c). This may but is not required to include an investigation into the living conditions, standard of care, verification of employment, income or other information. *Id.* However, in all cases, a background check and criminal records

check is required. *Id.* All suitability assessments must take into consideration the wishes and concerns of the child. *Id.*

d. ORR shall assess the nature and extent of the sponsor's relationship to the child. 45 C.F.R. §410.1202(d).

e. ORR shall consider the potential sponsor's motivation and the child's preferences and perspective. 45 C.F.R. §410.1202(e).

26. 45 C.F.R. § 410.1203(e) provides the only restriction, stating that ORR shall not be required to release an unaccompanied child to any person or agency it has reason to believe may harm or neglect the unaccompanied child or fail to present the unaccompanied child before DHS or the immigration courts when requested to do so.

27. Pursuant to 45 C.F.R. § 410.1204, a home study is only required where a child is a victim of human trafficking, has a disability that requires particularized services or treatment, certain instances where the child has been a victim of physical or sexual abuse, or where the potential sponsor presents a clear risk of abuse, maltreatment, exploitation, or trafficking. None of these are applicable to Petitioner.

28. "ORR has found that 10 to 20 days is generally sufficient to thoroughly assess sponsor suitability and notes that the additional time may be needed for a home study or other background checks in some cases". 89 Fed. Reg. 34384, 34447. In recognition of this, 45 C.F.R. § 410.1205(b) provides that "*ORR shall adjudicate the completed sponsor application of a parent ... within 10 calendar days or receipt* ... absent unexpected delays (such as a case that *requires* completion of a home study)." (emphasis added).

B. Reunification of UACs in ORR Custody Prior to 2025

29. ORR's sub-regulatory 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.

30. 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.

31. ORR's own child welfare experts have long stated that best practice is to release unaccompanied children to their families within 30 days of admission. *See, e.g.,* Exhibit 21 Part 2, *J.E.C.M. v. Hayes*, 18-cv-903 (E.D. Va. Sept. 16, 2019), ECF No. 242-13.

32. In fiscal years 2021 through 2024, the average length of time a child remained in ORR custody ranged from 27 to 33 days. U.S. Dep't of Health and Human Servs., Office of Refugee Resettlement, *Unaccompanied Alien Children Average Monthly Data: Average Length of Care*, https://acf.gov/orr/about/ucs/facts-anddata, last updated August 18, 2025.

C. Changes to Reunification of UACs in ORR Custody

33. On February 14, 2025, ORR began requiring fingerprint-based background checks of all sponsors, adult household members, and backup adult caregivers. ORR Field Guidance # 26.

34. On March 7, 2025, ORR narrowed the list of acceptable proof of identification documents from potential sponsors, household members and backup adult caregivers. Additionally, ORR began requiring potential sponsors to provide specific documents to establish proof of address and began requiring all sponsors to provide evidence of their relationship with the child (even if they also complete DNA testing). ORR Policy Guide § 2.2.4. Additionally, ORR added to the section that "Federal staff must exhaust all available avenues to verify the authenticity of birth certificates." *Id.* This can cause significant delays for children from countries of origin where there is no functioning consulate in the United States.

35. On March 17, 2025, ORR began requiring DNA testing of all children and potential sponsors who claim to be biologically related to the child they are applying to sponsor. ORR Field Guidance #27. In practice, sponsors and children have reported having to wait weeks or even months for a DNA appointment.[1]

36. On April 15, 2025, ORR narrowed the list of acceptable proof of income documents from potential sponsors. ORR Policy Guide § 2.2.4.

37. On May 28, 2025, ORR removed the sponsor application packet from public access, which was previously on their website. After this point, a potential sponsor can only receive the application directly from ORR.

38. On July 9, 2025, ORR began requiring potential sponsors to attend in-person appointments with ORR personnel to verify identification documents, sometimes with ICE present. This is not formally set out in ORR policies but ORR's internal email states that "federal law enforcement agencies 'may be present to meet their own mission objectives, which may

[1] *The Unraveling of ORR: A Quick and Calculated Undoing of a System Intended to Protect Children,* National Center for Youth Law (2025), https://youthlaw.org/wp-content/uploads/ncyl_the-unraveling-of-orr_sept2025_final.pdf.

include interviewing sponsors'." https://www.cnn.com/2025/08/08/politics/exclusive-federal-law-enforcement-to-begin-interviewing-unaccompanied-migrant-children-in-government-custody.

39. On July 14, 2025, ORR expanded the sponsor's application home study requirement to now include instances where a sponsor has sought to sponsor multiple children, to all children 12 years old or younger to a non-relative sponsor, when a sponsor refuses to submit a DNA test, when a sponsor is not biologically related to the child, and when a parent or legal guardian seeking an exception to the documentation requirement. ORR Policy Guide § 2.4.2.

40. Since January 2025 when these changes began, the average length of stay in ORR custody has consistently and concerningly increased in violation of the CFR and written intent of the agency – 37 days in January, 49 days in February, 112 in March, 217 in April, 191 days in May, 154 days in June, 171 days in July, 182 days in August. https://acf.gov/orr/about/ucs/facts-and-data. The average length of time in custody as of August 2025 is 179 days. U.S. Dep't of Health and Human Servs., Office of Refugee Resettlement, *Unaccompanied Alien Children Average Monthly Data: Average Length of Care*, https://acf.gov/orr/about/ucs/facts-anddata, last updated August 18, 2025.

D. Restrictions Upon UACs in ORR Custody

41. While ORR detention differs from ICE detention in many important ways, children in ORR detention nevertheless have their freedoms restricted. Children in ORR custody waiting to be released to a sponsor do not attend local schools. Instead, children are provided with educational hours in the detention center itself. Children are not able to freely have phone calls or visits with their family members, including their parents.

42. Children in ORR custody are granted only 1-hour per day of "large muscle activity" and 1-hour per day of "structured leisure time activities" which are increased to three hours on non-school days. ORR Rule 3.3.

43. Young Center consists of HHS-appointed Child Advocates to children in ORR custody pursuant to the TVPRA. "Research has shown that separation from a caregiver or parent for even a short period of time can be traumatic for a child."[2] "Children often suffer from 'detention fatigue', particularly during long stays in ORR custody, with symptoms of increased stress, anxiety, behavior issues, and self-harm or suicidal ideation."[3] "Children in [longer stays] may experience psychological distress, stemming from a sense of helplessness, limited agency, and lack of trauma-informed care."[4]

44. Children in ORR custody "are restricted in their autonomy and agency, they have little knowledge or control over requirements or processes for release, they feel helpless in their circumstances …"[5] and "quite universally want to be released to family … and are being held against their will in restrictive settings" in which even the "least restrictive" setting in ORR custody still feels quite restrictive to children.[6]

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[2] *Punishing Trauma, Incident Reporting and Immigrant Children in Government Custody,* Young Center for Immigrant Children's Rights and National Immigrant Justice Center (September 2022) https://www.theyoungcenter.org/wp-content/uploads/2025/03/20220921FINALSIRREPORT-HYPERLINKED-1.pdf citing S.A. MacLean et al., "Characterization of the mental health of immigrant children separated from their mothers at the U.S.–Mexico border," *Psychiatry Research,* April 2020, https://pubmed.ncbi.nlm.nih.gov/31522891/.

[3] *Id* citing Acting Inspector General Joanne M. Chiedi, HHS Off. of the Inspector General, *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody,* Sept. 2019, 12, https://oig.hhs.gov/oei/reports/oei-09-18-00431.pdf.

[4] *Id* citing Exhibit C: Declaration of Ryan Matlow: Psychological Evaluation of Children and Conditions at Fort Bliss Emergency Intake Site 2, *Flores v. Garland,* No. 85-cv-04544-DMG-AGR, ECF No. 1161-7 (C.D. Cal. Aug. 9, 2021) (describing "clinically significant psychological harm" suffered by children in prolonged detention in Fort Bliss)

[5] *The Unraveling of ORR: A Quick and Calculated Undoing of a System Intended to Protect Children,* National Center for Youth Law (2025), 17, https://youthlaw.org/wp-content/uploads/ncyl_the-unraveling-of-orr_sept2025_final.pdf.

[6] *Id.*

45. "ORR facilities require children to follow a plethora of rules: ORR rules, state-licensing regulations, facilities rules, and at times dorm or house-specific rules. Each of those rules impose restrictions on children's behavior. Many of these rules restrict behavior and movement that would typically not be prohibited for children outside government custody."[7] Children in ORR custody receive written incident reports for things like getting water or listening to music without permission.[8] Children were written up as having contraband for having extra snacks, candy or pencils.[9] Children were written up and deemed a flight risk for "expressing their desire to see relatives and experience life outside of ORR custody."[10]

46. Mental health clinicians document that a child's mental health often deteriorates as the length of stay in ORR custody increases.[11] Research and reports tell us "that children's experiences in immigration custody are associated with increases in psychological distress and functional impairment" including "increases in depression, anxiety, traumatic stress symptoms, and behavioral difficulties – sometimes leading to thoughts, urges, and acts of self-harm and suicidality – associated with children's experiences of immigration detention."[12]

E. Prolonged Detention

47. "'It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.'" *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "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 v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) ("Liberty

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[7] *Punishing Trauma* at p. 16
[8] *Id.*
[9] *Id.*
[10] *Id* at p. 17
[11] *The Unraveling of ORR* at p. 12.
[12] *Id* at p. 16.

under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention."). This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) ("both removable and inadmissible aliens are entitled to be free from detention that is arbitrary or capricious").

48. Due process therefore requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas,* 533 U.S. at 690 (internal quotation marks omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

49. Following *Zadvydas* and *Demore*, every circuit court of appeals to confront the issue has found either the immigration statutes or due process require a hearing for noncitizens subject to unreasonably prolonged detention pending removal proceedings. *See Sopo v. U.S. Attorney Gen.*, 825 F.3d 1199 (11th Cir. 2016) (detention under 8 U.S.C. § 1226(c)); *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016) (8 U.S.C. § 1226(c)); *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015) (8 U.S.C. § 1226(c)); *Rodriguez v. Robbins (Rodriguez III)*, 804 F.3d 1060 (9th Cir. 2015) (8 U.S.C. § 1226(c) and 8 U.S.C. § 1225(b)); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir. 2011) (8 U.S.C. § 1226(c)); *Diouf v. Holder (Diouf II)*, 634 F.3d 1081 (8 U.S.C. § 1231(a)); *Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2003) (8 U.S.C. § 1226(c)) (requiring release when mandatory detention exceeds a reasonable period of time).

50. The recognition that six months is a substantial period of confinement—and is the time after which additional process is required to support continued incarceration—is deeply rooted in our legal tradition. With few exceptions, "in the late 18th century in America crimes triable without a jury were for the most part punishable by no more than a six-month prison term . . . ." *Duncan v. State of La.*, 391 U.S. 145, 161 & n.34 (1968). Consistent with this tradition, the Supreme

Court has found six months to be the limit of confinement for a criminal offense that a federal court may impose without the protection afforded by jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality opinion). The Court has also looked to six months as a benchmark in other contexts involving civil detention. *See McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249, 250-52 (1972) (recognizing six months as an outer limit for confinement without individualized inquiry for civil commitment). The Court has likewise recognized the need for bright line constitutional rules in other areas of law. *See Maryland v. Shatzer*, 559 U.S. 98, 110 (2010) (14 days for re-interrogation following invocation of Miranda rights); *Cty. of Riverside v. McLaughlin*, 500 U.S. 44, 55-56 (1991) (48 hours for probable cause hearing).

51. To justify prolonged immigration detention, the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). Where the Supreme Court has permitted civil detention in other contexts, it has relied on the fact that the Government bore the burden of proof at least by clear and convincing evidence. *See United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention where "full-blown adversary hearing," requiring "clear and convincing evidence" and "neutral decisionmaker"); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding post-final-order custody review procedures deficient because, *inter alia*, they placed burden on detainee).

52. The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). First, prolonged incarceration deprives noncitizens of a "profound" liberty interest. *See Diouf II*, 634 F.3d at 1091–92 (9th Cir. 2011). Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unrepresented and frequently lack English proficiency. *See Santosky v. Kramer*, 455 U.S. 745,

763 (1982) (requiring clear and convincing evidence at parental termination proceedings because "numerous factors combine to magnify the risk of erroneous factfinding" including that "parents subject to termination proceedings are often poor, uneducated, or members of minority groups" and "[t]he State's attorney usually will be expert on the issues contested"). Moreover, detainees are incarcerated in prison-like conditions that severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing. *See infra* ¶ 39. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to the noncitizen's immigration records and other information that it can use to make its case for continued detention.

53. While the standard for prolonged detention for adults is generally six months (180 days), the *Flores* Settlement Agreement, TVPRA, and the Foundational Rule all establish that the detention of children requires greater care and more restrictions upon the government than that of adult detention such as taking into account their best interest. Therefore, the standard for prolonged detention for children should be far less than the 180-day standard applicable to adults.

54. 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).

STATEMENT OF FACTS

55. On December 30, 2022, USCIS granted Petitioner's Mother Lawful Permanent Residency in the United States. On July 9, 2024 Mother filed an I-130 Petition for Alien Relative for K.A.P.L., her unmarried minor child with USCIS which remains pending. Mother is married and K.A.P.L.'s step-father resides with Sponsor. K.A.P.L.'s step-father's Application for Adjustment of Status to Lawful Permanent Resident is pending with USCIS.

56. On or about November 14, 2025, Petitioner entered the United States and was designated an Unaccompanied Minor by DHS. On November 16, 2025, Petitioner was placed in ORR custody.

57. Petitioner is a minor child from Cuba, a country with no functioning consulate within the United States.

58. Petitioner and his mother do not fit the criteria for the July 2025 expanded home study requirement under Policy Guide § 2.4.2 as Petitioner's mother has not sponsored multiple children, is not a non-relative sponsor, has not refused to submit a DNA test, is biologically related to Petitioner and is not seeking an exception to the documentation requirement.

59. On November 20, 2025, Sponsor provided ORR with her Lawful Permanent Resident identification which was uploaded to the ORR database known as the UC Portal. Additionally, Petitioner's birth certificate was sent to ORR for verification.

60. ORR granted Sponsor permission to visit Petitioner in-person once per week for 2 hours per visit. At all times throughout the visitation process, Sponsor has attended the once per week visitations allowed with Petitioner. However, upon information and belief, on at least two occasions, Respondents shortened Petitioner's visits with Sponsor as punishment to Petitioner.

61. From November 23, 2025, until December 3, 2025, Sponsor and the Case Manager of Maryville submitted multiple inquiries to ORR about the status of reunification but received no response.

62. On December 3, 2025, ORR assigned FFS Michael Torres who contacted Sponsor and sent Sponsor the Family Reunification Application via email. On December 9, 2025, FFS received the completed Family Reunification Application from Sponsor and verified her signature on the application.

63. On December 22, 2025, FFS contacted Sponsor to clarify the last five years of address history. On December 30, 2025, FFS requested that sponsor attend an in-person Background Check (IBC) and scheduled her for fingerprinting for December 31, 2025. On December 31, 2025, Sponsor completed the fingerprinting/background check. On January 9, 2026, ORR cleared Sponsor's background check.

64. On January 15, 2026, a new FFS was assigned, Brenny Martinez and submitted an ID verification and DNA request. On January 20, 2026, and January 29, 2026 Sponsor contacted the ORR hotline and requested scheduling of the DNA test. ORR informed Sponsor that she needed to wait for ORR to schedule the DNA test.

65. On February 1, 2026, ORR completed Sponsor's ID verification. At this time, ORR system indicated that a DNA test and in-person verification of Sponsor's ID was still needed to approve reunification.

66. On February 4, 2026, Sponsor contacted ORR again requesting that the DNA test be scheduled.

67. On February 10, 2026, ORR requested that Sponsor complete a CANTS background check with DCFS. That background check was completed, and DCFS records were provided to ORR on February 24, 2026, with the results indicating "cleared".

68. On or about February 26, 2026, ORR contacted Sponsor and informed Sponsor that a home-study was added to the requirements for Petitioner to be released to Sponsor despite a home study not being required by any statute regulation or ORR Policy Guide.

69. As of today, March 2, 2026, Respondents have not scheduled nor completed a DNA test or in-person ID verification.

70. ORR has not identified any reason to believe that Sponsor is not Petitioner's biological mother, may harm or neglect Petitioner, or fail to present Petitioner before DHS or the immigration courts when requested to do so.

71. Petitioner wishes to be reunified with his mother.

72. Petitioner, a minor child, has now been in federal custody and separated from his mother for 111 days, despite Sponsor's completion of all of Respondent's requests and clearing

both a background check and DCFS check. The ongoing delay in scheduling DNA testing—well beyond the timeframe outlined in ORR's own guidance and not a requirement for release under ORR policy—has resulted in continued, unnecessary detention and emotional distress for the minor child being separated from his mother.

73. Petitioner's freedom is restricted while in ORR detention. Petitioner is allowed visits with his mother only once per week for a maximum of two hours. Petitioner is not allowed general access to the outside. Upon information and belief, on one occasion, Petitioner opened a window to get fresh air and was punished with a shortened visit with his mother. Petitioner is not able to attend local school but instead receives educational hours at the detention center itself.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Procedural Due Process

74. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

75. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 698 (2001). 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.").

76. Due process requires that the government may not deprive an individual of their constitutional rights without meaningful notice and an opportunity to be heard before a neutral arbiter to protect against the risk of erroneous deprivation. *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976). Due process also requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

77. Respondents' policies and actions, as set forth above, have deprived Petitioner of freedom from confinement and his right to family integrity without Constitutionally sufficient due process.

78. The prolonged detention of Petitioner is inflicting devastating trauma at a young age and violates the TVPRA requirement that children be "promptly placed in the least restrictive setting that is in the best interest of the child". 8 U.S.C. § 1232(c)(2). This grievous harm caused by Petitioner's prolonged detention at the hands of the government is ongoing, as are the violations of Petitioner's constitutional, statutory, and other legal rights. The prolonged detention further violates ORR's policy to adjudicate Sponsor's application within 10 calendar days. Respondents have failed to adjudicate Sponsor's application for over 85 days.

79. Respondents have failed to act promptly.

80. ORR's ongoing and prolonged detention of Petitioner bears no reasonable relation to any government purpose. Petitioner has not committed any crime and is not a danger to himself or others. Sponsor has demonstrated herself as a capable, and willing sponsor to care for her children, according to the requirements of law. Moreover, Sponsor is in fact capable, proper, and fit, and Petitioner presents no flight risk.

COUNT TWO
Violation of the TVPRA, 8 U.S.C. § 1232

81. Petitioner restates and realleges all paragraphs above as if fully set forth herein.

82. Respondents have a non-discretionary duty under the TVPRA to promptly place Petitioner "in the least restrictive setting" that is in his best interests, usually with "a suitable family member." 8 U.S.C. § 1232(c)(2)(A).

83. Respondents' policies and actions described above, which have resulted in Petitioner's unnecessary prolonged detention and separation from a suitable sponsor, violates Section 235 of the TVPRA, 8 U.S.C. § 1232.

COUNT THREE
Violation of the APA, 5 U.S.C. §§ 701 *et seq.*

84. Petitioner restates and realleges all paragraphs above as if fully set forth herein.

85. Respondents' decision to detain Petitioner and failure to release Petitioner to his Sponsor constitutes final agency action.

86. Respondents' action enacting the policy preventing release, determines the "rights and obligations" of Petitioner and creates "legal consequences" of continued detainment and separation from his mother, in violation of Petitioner's fundamental right to family integrity. *Bennett v. Spear*, 520 U.S. 154, 177-78 (1977). Accordingly, Petitioner is entitled to judicial review of ORR's actions under 5 U.S.C. §§ 702 and 704.

87. Respondents' detention of Petitioner and their failure to release Petitioner to his biological mother and fit sponsor is arbitrary, capricious, and not in accordance with the law. 5 U.S.C. § 706(2)(A).

88. Petitioner has no other method to be release from ORR detention other than through a vetted sponsor. Petitioner has exhausted all administrative remedies available to him as of right and has no recourse to judicial review other than by this action.

COUNT FOUR
Violation of the Foundational Rule, 45 C.F.R. §§ 410.1000 *et seq.*, and the ORR UC Policy Guide

89. Petitioner restates and realleges all paragraphs above as if fully set forth herein.

90. Federal agencies and their officials are required to follow their own "existing valid regulations." *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). When an agency fails to comply with binding regulations, such actions are "not in accordance with law." *See Vitarelli v. Seaton*, 359 U.S. 535, 545 (1959).

91. Under the Foundational Rule, Respondents have a non-discretionary duty to promptly place Petitioner in the least restrictive setting that is in his 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).

92. 45 C.F.R. § 410.1205(b) provides that "ORR shall adjudicate the completed sponsor application of a parent … within 10 calendar days or receipt … absent unexpected delays (such as a case that requires completion of a home study)." Completion of a home study is not required for Petitioner to be released to Sponsor.

93. Respondents have failed to adjudicate Sponsor's application in violation of their own regulations and guidance, and therefore are holding Petitioner unlawfully.

COUNT FIVE
Habeas Corpus

94. Petitioner restates and realleges all paragraphs above as if fully set forth herein.

95. As set forth above, Respondents are holding Petitioner in federal custody, in violation of federal statutes, Foundational Rule, the *Flores* Settlement Agreement, their own agency policies guidance, and the U.S. Constitution.

96. Accordingly, Petitioner seeks a writ of habeas corpus compelling Respondents to release Petitioner to the custody and care of Sponsor.

COUNT SIX
Violation of the Mandamus Act, 28 U.S.C. § 1361

97. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

98. Mandamus is available to compel a federal official or agency to perform a duty if: (1) there is a clear right to the relief requested; (2) defendant has a clear, non-discretionary duty to act; and (3) there is no other adequate remedy available. *See* 28 U.S.C. § 1361.

99. Petitioners fall within the zone of interest protected by the TVPRA. They have the statutory right to be "promptly placed in a least restrictive setting that is in their best interest." 8 U.S.C. § 1232(c)(2).

100. Respondents have a nondiscretionary duty to place Petitioners in a "least restrictive setting that is in their best interest." 8 U.S.C. § 1232(c)(2). Here the least restrictive setting is to place Petitioner with his mother and not remain in ORR custody.

101. There are no other adequate remedies available to Petitioner to obtain release from ORR custody to his mother.

102. Petitioner is entitled to relief in the nature of mandamus pursuant to 28 U.S.C. § 1361 to compel Respondents to promptly release Petitioner to the care of his biological mother/Sponsor.

PRAYER FOR RELIEF

Petitioner prays that the Court assume jurisdiction over this Petition and Complaint and grant the following relief:

I. Issue a Writ of Habeas Corpus and Mandamus compelling Respondents to release Petitioner to the custody and care of Sponsor.

II. A declaration that Respondents have violated Petitioners' constitutional and statutory rights.

III. An injunction compelling Petitioners' placement in the custody of Sponsor as required by federal statutes, the Flores Settlement Agreement, and the U.S. Constitution;

IV. An award of attorney's fees and costs to the extent permitted by law, including but not limited to the Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412; and,

V. Any other relief the Court deems just and proper.

Dated: March 5, 2026

Respectfully submitted,

/s/ Laura J Smith
Attorney for Petitioner

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Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus, Mandamus and Complaint for Injunction are true and correct to the best of my knowledge.

Dated this 5th day of March, 2026.

/s/ Laura Smith
Attorney for Petitioner

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