U.S. Department of Justice

United States Attorney
Southern District of New York

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New York, New York 10007

March 31, 2026

VIA ECF
The Honorable Jeannette A. Vargas
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *I.T., et al. v. Robert F. Kennedy, Jr., et al.*, No. 26 Civ. 2563 (JAV)

Dear Judge Vargas:

This Office represents Respondents (the "Government") in the above-referenced habeas corpus action seeking the release of two Unaccompanied Alien Children ("UACs"). We write respectfully, pursuant to the Court's March 30, 2026, order, ECF No. 10 ("March 30 Order"), to respond to Petitioners' motion for a temporary restraining order and to answer the questions posed in the March 30 Order. We also incorporate by reference the Declaration of Elizabeth Kronk ("Kronk Decl."), which provides additional legal and factual background.

Legal Background

The Homeland Security Act of 2002 ("HSA") assigns the Office of Refugee Resettlement ("ORR") broad authority over the care and custody of UACs[1] while they are in federal custody due to their immigration status, including coordinating their care and placement, ensuring their best interests in custodial decisions, and protecting them from smugglers, traffickers, and others who might seek to victimize and exploit UACs. 6 U.S.C. § 279(b)(1)(A), (b)(2)(A)(ii). ORR's goal is to release UACs to suitable sponsors where consistent with its statutory mandate to ensure that placement does not result in danger to UACs, to the community, or risk of flight by any UAC. *See* Kronk Decl. ¶ 11; *see also* 6 U.S.C. § 279(b)(1), (b)(2)(A)(ii); 8 U.S.C. § 1232(c)(1), (c)(3)(A).

The Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA") prohibits HHS from releasing a child to a proposed custodian unless HHS first "makes a determination that the proposed custodian is capable of providing for the child's physical and mental well-being," which "shall, at a minimum, include verification of the custodian's identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child." 8 U.S.C. § 1232(c)(3)(A). In addition, under its

[1] HSA defines a UAC as "a child who—(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody." 6 U.S.C. § 279(g)(2).

regulations, which implement the Flores Settlement Agreement[2] ("FSA"), ORR assesses all potential sponsors (even when the potential sponsor is a child's parent) before making any release determination, including a review of the potential sponsor's strengths, resources, risk factors, and relationship to the UAC. Kronk Decl. ¶ 14; *see also, e.g.,* 45 C.F.R. §§ 410.1201(a), 1202(b) and (c), 1205.

The process for release of a UAC from ORR custody involves several steps, including: the identification of sponsors; sponsor application; interviews; the assessment of sponsor suitability, including verification of the sponsor's identity and relationship to the child (if any), background checks, in some cases home studies; and post-release planning. Kronk Decl. ¶¶ 17-21; *see also* 45 C.F.R. part 410, subpart C. Once the assessment of the potential sponsor is complete, the care provider makes a release recommendation. Kronk Decl. ¶ 22; UACB Policy Guide § 2.7. The recommendation must take into consideration all relevant information, including the report and recommendations from a home study, if conducted, laws governing the process, and other facts in the case. Kronk Decl. ¶ 22. ORR makes the final release decision. *Id.*; UACB Policy Guide § 2.7.[3]

Factual Background

Petitioners I.T. (A-number [redacted]) and Z.T. (A-number [redacted]) are UACs and citizens of Mexico, who were encountered by U.S. Customs and Border Protection ("CBP") agents on August 19, 2025, near El Paso Texas. Kronk Decl. ¶ 28. CBP transferred Petitioners into ORR custody pursuant to 8 U.S.C. § 1232(b) on August 22, 2025. *Id.* ¶ 29. ORR performed an initial intake assessment of the petitioners on August 22, 2025, and placed Petitioners with Cayuga Centers, in New York, New York as a family group, where Petitioners remain today. *Id.* ¶ 30. On August 22, 2025, ORR identified B.V.T.R., Petitioners' mother, as a potential sponsor ("Sponsor") and contacted her to begin the assessment process. *Id.* ¶ 31.

As outlined in the Kronk Declaration, from August 2025, through present, ORR has taken multiple steps to completing the assessment process, including in February 2026 completing a home study with positive results. *Id.* ¶¶ 32-44. At the time of filing, the only items that remain outstanding are that the Sponsor has not provided a valid Social Security or Individual Tax Identification Number ("ITIN") to ORR, and her in-person ID verification remains outstanding after she rejected a scheduled appointment for an in-person ID check. *Id.* ¶¶ 41, 45.

ORR is currently seeking a waiver of the Sponsor's lack of a social security number or ITIN. *Id.* ¶ 46. While the waiver is pending approval, ORR is proactively reviewing the full sponsor application so that a final release decision can be made shortly after the waiver is approved or denied. *Id.* ¶ 47. ORR expects that a final decision will be made within the next two days. *Id.* ¶ 47.

[2] The FSA is a consent decree entered into by the former Immigration and Naturalization Service ("INS") governing the apprehension, process, and care and custody of alien minors in its custody. The Department of Homeland Security and Department of Health and Human Services are successor agencies to the former INS with respect to various parts of the FSA. However, the FSA has been mostly terminated as to HHS. *See Flores v. Garland*, No. 85 Civ. 4544, 2024 WL 3467715, at *9 (C.D. Cal. June 28, 2024) (conditionally and partially terminating the FSA as to HHS on the basis of ORR's publication of regulations implementing the Agreement). The few remaining paragraphs of the FSA that still apply to HHS do not pertain to the ORR release processes (*e.g.*, the sponsor vetting processes).

[3] The UACB Policy Guide is available at https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide.

If the sponsor application is approved, ORR intends to conduct the Sponsor's in-person ID verification at the ORR-funded care provider, at the time of discharge of Petitioners to the Sponsor. *Id.* ¶ 48.

Petitioners filed the instant action and emergency motion for a temporary restraining order over the weekend. *See* ECF Nos. 1, 3-4. Yesterday, the Court ordered that the Government respond by 10 a.m. today. *See* March 30 Order.[4]

Legal Argument

Although the Government anticipates that the assessment process will be completed soon, the Government briefly responds to Petitioners' arguments on the merits.

First, Petitioner's procedural and substantive due process claims fail. With respect to procedural due process, under the balancing test pursuant to *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), ORR's procedures do not create a risk of erroneous deprivation because they are designed to release Petitioners to their Sponsor as soon as ORR can be assured that such release is safe and in the best interests of Petitioners. By requesting immediate release, Petitioners seek to short-circuit ORR's process for assessing issues of safety and the child's best interest. ORR is actively reviewing the Sponsor's application and is nearing the final step in the process. The Government has a strong interest in protecting the welfare of UACs, as clearly expressed through the provisions of the TVPRA. *See Santosky v. Kramer*, 455 U.S. 745, 766 (1982) ("[T]he State has an urgent interest in the welfare of the child . . . .") (citation and internal quotation marks omitted). ORR's procedures under the TVPRA are established to ensure that before any UAC is released from Government custody, the custodian and members of the household to whom the UAC is released are evaluated and determined to be safe and suitable for the UAC. Thus, these procedures serve an important governmental interest that cannot be set aside without creating a risk to the safety of UACs. For the above reasons, ORR's procedures seeking to release Petitioners to a safe and suitable custodian comport with, rather than violate, due process.

With respect to substantive due process, it is difficult to overstate the extremely narrow nature of substantive due process analysis under Supreme Court jurisprudence, or the significant burden that Petitioners must carry to demonstrate that ORR's policies run afoul of the same. As the Supreme Court has repeatedly explained, substantive due process only "prevents the government from engaging in conduct that shocks the conscience . . . or interferes with rights implicit in the concept of ordered liberty." *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 847 (1998) (quoting *United States v. Salerno*, 481 U.S. 739, 746 (1987)). In cases challenging executive action, the threshold question is whether the challenged conduct was "so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *Lewis*, 523 U.S. at 847 n.8. The facts here do not even approach this standard; indeed, ORR is engaged in a release process that is meant to protect Petitioners' well-being, not harm it.

[4] To answer additional questions posed by the March 30 Order, Petitioners were located in the Southern District of New York at the time the Petition was filed, and the undersigned counsel can facilitate counsel's access to Petitioners. ORR has been provided with a copy of the Court's March 30 Order. The asserted basis for detention is not 8 U.S.C. § 1225(b)(2)(A). Petitioners are in removal proceedings, with the next hearing scheduled for April 15, 2026. We understand from ORR that there are no final orders of removal.

Further, Petitioners' Administrative Procedure Act ("APA") and statutory claims also fail. The APA permits judicial review of agency action only when, *inter alia*, "there is no other adequate remedy in a court." 5 U.S.C. § 704. Where an alien's claims for relief "'necessarily imply the invalidity' of their confinement," those claims "must be brought in habeas" and not as APA claims. *See Trump v. J.G.G.*, 604 U.S. 670, 672 (2025). Petitioners' statutory claim is unavailing as the requirement that ORR "promptly place[]" UACs must be read in conjunction with its responsibility to conduct a suitability assessment to ensure their best interests, including verification of the Sponsor's identity, a process which is nearing completion here.[5]

Finally, given that the assessment process is meant to protect Petitioners and likely will be completed very soon, Petitioners have not demonstrated irreparable harm warranting injunctive relief.

We thank the Court for its consideration of this letter.

Respectfully submitted,

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[5] Similarly, Petitioners' *Accardi* claim fails as the Government has complied with its regulations to ensure prompt but safe releases of UACs.