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

K.A.V.O.,	)	
	)	
Petitioner,	)	
	)	Case No. 1:26-cv-5105
v.	)	
	)	
MARKWAYNE MULLIN, Secretary of Homeland Security;	)	
ROBERT F. KENNEDY, JR., Secretary of Health and Human Services;	)	
ANGIE SALAZAR, Acting Director of the Office Of Refugee Resettlement;	)	
MARVENA TWIGG, President of the National Youth Advocate Program,	)	
	)	
Respondents.	)	
	)	

PETITION FOR A WRIT OF HABEAS CORPUS

COMES NOW K.A.V.O., the Petitioner, represented by his undersigned Pro-Bono attorneys, and very respectfully requests that this Honorable Court issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, ordering his immediate release.

Introduction

K.A.V.O., the Petitioner, is a 16-year-old immigrant child whom the Respondents have detained for **over five months**. K.A.V.O.'s brother is residing in the U.S. and has successfully completed a Family Reunification Application ("FRA"). His brother has complied with the sponsor vetting process by promptly completing proof of income and address, U.S.-issued

identification documents, fingerprinting, and background checks. Nonetheless, ORR has failed to "promptly" release K.A.C.O. to the custody of his brother.

ORR now intends to require a home study (which is only required where there is evidence of abuse and other not applicable circumstances) and DNA testing. Despite the demonstrated lack of need for these procedures, K.A.V.O.'s brother is willing to comply with ORR's directive. However, due to ORR's administrative failure to properly withdraw K.A.V.O.'s cousin's previous sponsor application, his brother is prevented from even scheduling the required appointments. Further, the ORR officials who are able to rectify this error are out of office for the coming weeks. As a result, K.A.V.O. remains separated from his brother, who is ready and willing to relieve his brother of his isolation. The Petitioner seeks release from government detention to the custody of his brother.

The Trafficking Victims Protection Reauthorization Act ("TVPRA") mandates that the government "promptly" release the immigrant children in its custody to the "least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2). K.A.V.O.'s brother can provide that setting. By retaining custody of K.A.V.O. and separating him from his brother, who can safely provide for him, Respondents are violating the TVPRA and K.A.V.O.'s Fifth Amendment right to due process.

The TVPRA requires that the Respondents act on sponsors' applications quickly—in the case of a close relative, within at most 10 days. Despite his brother's suitability, the Respondents have unjustifiably kept the Petitioner in their custody and away from his family for over **five months** to the detriment of Petitioner's mental and emotional health. The Respondents have delayed release based on newly created policies promulgated without notice and comment that impose unjustified administrative barriers.

The delay in K.A.V.O.'s release is unlawful because it contravenes the time limit provisions of the TVPRA. The delay and new policies also violate K.A.V.O.'s Fifth Amendment rights; they unnecessarily impede familial association, prolong groundless institutional custody, are not rationally related to a legitimate government interest, and are procedurally flawed. Lastly, the new policies violate the Administrative Procedure Act ("APA") as they are arbitrary and capricious, violate the Constitution, fail to consider the impact of the policy on unaccompanied minors or their reliance of the previous policy and do not follow proper rulemaking procedures.

Therefore, pursuant to 28 U.S.C. § 2241, K.A.V.O. respectfully requests that he be released into the custody of his sponsor forthwith.

I. Parties

1. The Petitioner, K.A.V.O., is a minor immigrant child from Guatemala, who entered the United States on or about November 20, 2025, and was unaccompanied by an adult when Respondents detained him. He has been detained by Respondents for over five months.

2. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security ("DHS"), and as such, has influence over the detention of K.A.V.O. He is sued in his official capacity.

3. Defendant Robert F. Kennedy Jr. is the Secretary of the Department of Health and Human Services ("HHS"). He has authority over the ORR, a division of the HHS that directly oversees, controls, and manages the detention of unaccompanied immigrant children ("UIC"), including K.A.V.O. He is sued in his official capacity.

4. Respondent Angie Salazar is the Acting Director of the ORR, and as such, directly oversees, controls, and manages the detention of UIC, including K.A.V.O. She is sued in her official capacity.

5. Respondent Marvena Twigg is the President of the National Youth Advocate Program – Illinois ("NYAP-IL"), the immediate custodian of K.A.V.O. She is sued in her official capacity.

II. Jurisdiction, Venue, and Exhaustion

6. This court has subject-matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Federal questions in this case arise under the TVPRA, 8 U.S.C. § 1232, and its implementing regulations, 45 C.F.R. § 410.1200-1210, and the APA, 5 U.S.C. § 701 *et seq*.

7. The Petitioner has standing to sue based on his detention in institutional custody. *See, e.g.*, *J.E.C.M. v. Lloyd*, 352 F. Supp. 3d 559, 579 (E.D. Va. 2018) (finding standing to challenge ORR policies based on the ongoing invasion of due process rights, including separation from family, that resulted from the policies); *Jacinto-Castamon de Nolasco v. ICE*, 319 F. Supp. 3d 491, 502 (D.D.C. 2018) (finding indefinite separation or families not a compelling government interest therefore giving the plaintiff standing to sue). Further, the Petitioner remains detained because ORR has failed to act expeditiously as required by the TVPRA and is imposing procedures not required by its own regulations or are otherwise unnecessary. Thus, he is injured by that requirement. *See FDA v. All. For Hippocratic Med.*, 602 U.S. 367, 384-85 (2024) (finding injury to an individual through regulation of third-party individuals or businesses when there is "a predictable chain of events leading from the government action to the asserted injury").

8. 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.

9. Venue is proper in the Northern District of Illinois under 28 U.S.C. § 2241 and § 1391(b)(2) because the Petitioner is in Respondents' custody in this district. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973) (venue lies in the judicial district where petitioners are held). Venue is also proper in this district because Respondents are employees, officers, and agencies of the United States, and a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this district. 28 U.S.C. § 2241 and § 1391(e).

10. Exhaustion of administrative remedies is not required. First, under the TVPRA, Congress has not mandated that Petitioner exhaust any administrative remedies. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) (holding unless Congress has mandated exhaustion, it is not required under 28 U.S.C. § 2241). Second, a requirement that Petitioner exhaust an administrative challenge to his detention would be futile. *See Carr v. Saul,* 593 U.S. 83, 93 (2021) (exhaustion of administrative remedies not required if effort is futile); *Honig v. Doe,* 484 U.S. 305, 326-27 (1988) (same). Respondents have not supplied any reason for Petitioner to believe that an administrative challenge will lead to his release to his sponsor. Third, the interests of Petitioner in his immediate release, permitting him to reunify with his brother, and the delay that further exhaustion would necessitate, outweigh any discretionary judicial interest in exhaustion.

III. Requirements of 28 U.S.C. § 2243

11. The Court must grant a Petition for Writ of Habeas Corpus or issue an order to show cause ("OSC") to the Respondents to show cause why the writ should not be granted "forthwith," unless it appears from the application that Petitioner is not entitled to relief. 28 U.S.C. § 2243. If writ or an OSC 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.* 14. 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 or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963). "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." *Ruby v. United States,* 341 F.2d 585, 587 (9th Cir.1965).

IV. Case-Specific Facts

12. Federal officials captured K.A.V.O. on or around November 20, 2025, and deemed him a minor unaccompanied by an adult. Since his capture, Respondents have confined him in ORR custody or in the custody of ORR's agents, severely restricting the Petitioner's freedom to move and otherwise engage in normal activities for children. This prolonged separation from his family, now exceeding five months, has caused a marked deterioration in his mental and emotional well-being. K.A.V.O. urgently needs reunification with his family now.

13. Upon K.A.V.O.'s arrival at the shelter, his first cousin, who resides in Nebraska, petitioned to sponsor K.A.V.O. This sponsorship application did not progress further because members of the cousin's household were not willing to participate in the rigorous sponsor vetting process.

14. At the beginning of April, K.A.V.O.'s brother, who also resides in Nebraska, completed an FRA to sponsor his brother. Since then, the sponsor has fully complied with the vetting process and promptly completed background checks, fingerprints, proof of income and address, and submission of all application paperwork, including submitting his USCIS-issued Employment Authorization Document, which satisfies the ORR's recently enacted requirements for US-issued identification documentation. K.A.V.O.'s brother has done everything within his

power to secure K.A.V.O.'s release and provide him with a safe, stable home. The sponsor is ready and willing to care for K.A.V.O. immediately.

15. Despite K.A.V.O.'s brother's quick progress, ORR has unnecessarily stalled the sponsorship process. Earlier this month, ORR reassigned the Division of Sponsor Administration Federal Field Specialist ("DSA-FFS") overseeing K.A.V.O.'s sponsor vetting. The outgoing DSA-FFS failed to properly withdraw K.A.V.O.'s cousin in ORR's online system. As a result of the failure to properly finalize the previous sponsor's withdrawal, ORR has not completed the vetting process for K.A.V.O.'s brother even though the brother completed all prerequisite steps. Staff at the shelter where K.A.V.O. is residing raised this issue with the newly assigned DSA-FFS, however, the DSA-FFS is out of the office until May 8, 2026. The shelter then escalated the issue to the ORR official overseeing the shelter; however, she is also out of the office until May 8, 2026. ORR's internal administrative failures have therefore brought the sponsorship process to a standstill.

16. In addition, ORR has requested that K.A.V.O.'s brother complete a home study, which, according to ORR regulations, is not required. 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 conditions are present in K.A.V.O.'s case. ORR is also requesting DNA testing. However, ORR declines to pursue these remaining steps concurrently, even where the sponsor has already satisfied all prior requirements. This policy choice has caused unnecessary delay at the final stage of vetting.

17. K.A.V.O. has suffered emotionally as a result of his prolonged detention and is desperate to reunite with his family. In addition, K.A.V.O. has missed a substantial portion of the school year while in custody, further exacerbating the harm caused by his continued separation.

18. Petitioner seeks his immediate release from institutional custody. "[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Petitioner seeks release into the custody of his brother forthwith.

V. Legal Framework

19. The care and custody of UIC is governed by a legal framework consisting primarily of two statutes, a settlement agreement and federal regulations. The two statutes are the Homeland Security Act of 2002 and the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). The settlement agreement is the 1997 Flores Settlement Agreement, which is binding on the pertinent federal agencies. The federal regulations consist of the Foundational Rule (defined below), promulgated pursuant to the TVPRA.

A. The Flores Settlement Agreement

20. The Flores Settlement Agreement (defined below) 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").

21. Among other things, the Flores Settlement 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.

22. 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. 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.

B. The Homeland Security Act of 2002

24. The Homeland Security Act of 2002 ("HSA") abolished the INS and transferred the care of UIC, like K.A.V.O., to ORR. 6 U.S.C. §§279(a), (b)(1)(A), (g)(2). Section 462 of the HSA extended the key terms of the Flores Settlement Agreement to all UIC. This was a deliberate choice by Congress to put the care of children in the hands of a non-law enforcement agency like ORR, with a mandate to make decisions in the children's best interests. 6 U.S.C. §§ 279(a),

(b)(1)(B); 8 U.S.C. § 1232(c)(2)(A). Congress recognized that a child's welfare should not be in the hands of a law enforcement agency. It tasked ORR with safeguarding the welfare of children, most of whom have been victims of traffickers. *See* 8 U.S.C. § 1232(a)(2)(B).

25. When UIC arrive at the U.S. border or are found in the U.S. without papers, they are placed in the care of ORR. 45 C.F.R. § 410.1101(a). The HSA requires ORR to provide for the children in their custody, organize their care and placement, and protect the children from those who might seek to victimize them. 6 U.S.C. § 279(b)(1)(A) & (b)(2)(A)(ii). In making placement determinations for UICs in their custody, 6 U.S.C. § 279(b)(1)(C), ORR must ensure that these children "are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity." *Id.* § 279(b)(2)(A)(ii).

C. The Trafficking Victims Protection Reauthorization Act of 2008

26. The TVPRA, enacted in 2008, reaffirmed the congressional directive for HHS to "establish policies and programs to ensure that [UIC] in the United States are protected from traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity." 8 U.S.C. § 1232(c)(1). This law codified a portion of the Flores Settlement Agreement. In recognition of the trauma that the separation from family and isolation in detention centers causes children, the TVPRA directs ORR **to promptly** place these minors "in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A) (emphasis added).

27. In December 2022, the U.S. Senate Committee on Homeland Security and Governmental Affairs published a report identifying concerns with ORR's sponsor vetting process. Minority Staff of S. Comm. on Homeland Sec. and Governmental Affs., 117th Cong., Federal Care of Unaccompanied Children: Minors Remain Vulnerable to Trafficking and Abuse (2022). In

particular, the report noted that ORR's completion of background checks had significantly declined despite an increase in the number of UIC entering the United States over the same period. *Id.* at 34.

28. Also in 2024, the HHS Office of Inspector General found widespread failures in ORR's completion of case files and follow-through during the sponsor vetting process. *See generally*, Off. of Inspector Gen., Dep't of Health and Human Servs., OEI-07-21-00250, Gaps in Sponsor Screening and Followup Raise Safety Concerns for Unaccompanied Children (2024) ("OIG Report"). OIG recommended developing additional safeguards. *See* OIG Report at 22.

D. The Federal Regulations

29. In 2024, ORR promulgated the Unaccompanied Children Program Foundational Rule ("Foundational Rule"), formalizing preexisting ORR procedures. 45 C.F.R. pt. 410 (2024). The Foundational Rule recognizes and incorporates the Flores Settlement Agreement, including favoring release of UIC to a suitable sponsor where ORR determines that "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." *Id.* § 410.1201(a).

30. Potential sponsors must submit an application and be vetted by ORR to determine their suitability. *Id.* § 410.1202(a). The regulations direct ORR to assess whether a sponsor "is capable of providing for the unaccompanied minor's physical and mental well-being." 45 C.F.R. §410.1202(b). The suitability assessment must include determining the sponsor's ability to care for the child, verifying the sponsor's identity and relationship to the child, and assessing the suitability of the sponsor's home. *Id.* § 410.1202(b). In addition, ORR "may require such components as ... verification of the employment, income, or other information provided by the potential sponsor as evidence of the ability to support the child, interviews with members of the

household, [and] a home visit or home study." *Id.* § 410.1202(c). Potential sponsors and any adult residents in the potential sponsor's home may also be required to submit their fingerprints for background checks. *Id.*

31. 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 circumstances apply to K.A.V.O., yet ORR's imposition of a home study on his brother is delaying K.A.V.O.'s release.

32. "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 once the ORR determines that a sponsor is qualified and can provide a setting that is in the best interest of the child, ORR must "release a child from its custody without unnecessary delay." *Id.* at §410.1201. When the sponsor is a close relative, an unnecessary delay is more than 10 days. *Id.* at §410.1205(b).

33. If ORR denies release, it must appoint a "neutral and detached decision maker" to "promptly" notify the potential sponsor. *Id.* § 410.1205(c). The decision must explain the reason for the denial, and (unless safety reasons or the law forbids it) the evidence upon which the denial is based. *Id.* The decision is subject to *de novo* review, with the opportunity for legal representation, at an administrative appellate hearing. *Id.* § 410.1206.

E. Recent Change in ORR Document Policies

34. In March 2025, without following normal rule-making procedures, providing an explanation, or updating relevant agency documents, ORR drastically amended its proof of identification requirements for potential sponsors as set forth in its Policy Guide. Specifically, ORR eliminated certain forms of foreign-issued identification documents, such as passports,[1] birth certificates, and national ID cards, from its list of acceptable identification documents for prospective UIC sponsors.[2]

35. 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. ORR further added the requirement 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.

36. 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.[3] In practice, sponsors and children have reported having to wait weeks or even months for a DNA appointment.[4]

37. On April 15, 2025, ORR once again, without following normal rule-making procedures, providing an explanation, or updating relevant agency documents, amended the Policy Guide by implementing new proof of income requirements. While before, potential sponsors could employ a variety of methods to demonstrate their financial ability to support a UIC, the amended

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[1] ORR only is accepting foreign passports that have a U.S. visa stamp. *See* Office of Refugee Resettlement, ORR Unaccompanied Alien Children Bureau Policy Guide: Section 2, https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2 (last accessed Apr. 2, 2026).

[2] Office of Refugee Resettlement, ORR Unaccompanied Alien Children Bureau Policy Guide: Section 2, https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2 (last accessed Apr. 2, 2026).

[3] ORR Field Guidance #27, https://acf.gov/sites/default/files/documents/orr/FG-27_-_DNA_Testing_Expansion.pdf.

[4] 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.

guide now requires potential sponsors to submit either (1) the previous year's tax return; (2) paystubs from the last 60 days; or (3) a letter from the sponsor's employer verifying salary and employment.[5]

38. 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, which has caused additional delay.

39. On July 9, 2025, ORR began requiring potential sponsors to attend in-person appointments with ORR personnel to verify identification documents, sometimes with Immigration and Customs Enforcement ("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 include interviewing sponsors.'" https://www.cnn.com/2025/08/08/politics/exclusive-federal-law-enforcement-to-begin-interviewing-unaccompanied-migrant-children-in-government-custody.

40. Taken together, these new requirements ("ORR New Document Policies") represent an insurmountable obstacle for sponsors and a bar to minor reunification with qualified sponsors. The ORR New Document Policies conflict with existing federal regulations, which provide that an alien, including a sponsor of a UIC, may prove identity with a foreign-issued form of identification. *See* 45 C.F.R. § 410.1202(b).

41. ORR's own child welfare experts have long stated that best practice is to release UIC to their families within 30 days of admission. *See, e.g.*, Exhibit 21 Part 2, *J.E.C.M. v. Hayes*,

[5] Office of Refugee Resettlement, ORR Unaccompanied Alien Children Bureau Policy Guide: Section 2, https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2.2.4 (last accessed Apr. 2, 2026).

18-cv-903 (E.D. Va. Sept. 16, 2019), ECF No. 242-13. 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. In 2025, the average length of time a child remained in ORR custody was 117 days or 4 months. See https://acf.gov/orr/about/ucs/facts-anddata.

42. Though this number is alarmingly high when compared to fiscal years 2021 through 2024, it is deceiving as it includes the months prior to the implementation of the ORR New Document Policies. Since the implementation of the ORR New Document Policies, the average length of time a child remained in ORR custody spiraled to 112 in March 2025, 217 in April 2025, 191 days in May 2025, 154 days in June 2025, 171 days in July 2025, and 182 days in August 2025.[6]

F. Restrictions Upon UIC in ORR Custody

43. Children in ORR detention have their freedoms significantly restricted. Children in ORR custody waiting to be released to a sponsor do not attend local schools. Instead, children are typically provided with "educational hours" in the detention center itself.

44. Children in ORR custody are not able to freely have visits with their family members, including their parents, as many, like K.A.V.O., are held in districts located far away from where their family members live.

[6] *See* Petition filed in *K.A.P.L. vs. Angie Salazar, et als*, 26cv2477, Dkt. No. 1, p. 12, United States District Court for the District Illinois, Eastern Division.

45. 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.

46. "Research has shown that separation from a caregiver or parent for even a short period of time can be traumatic for a child."[7] "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."[8] "Children in [longer stays] may experience psychological distress, stemming from a sense of helplessness, limited agency, and lack of trauma-informed care."[9]

47. 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 …"[10] 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. *Id.*

48. Mental health clinicians document that a child's mental health often deteriorates as the length of stay in ORR custody increases. *Id.* at p. 12. Research and reports tell us that

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[7] 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/.

[8] *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.

[9] *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)).

[10] 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.

"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." *Id.* at p. 16.

49. After over five months in the shelter, K.A.V.O. has suffered detention fatigue and is desperate to be reunited with his family.

G. Prolonged Detention of Immigrant Children

50. Due process 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 v. Davis*, 533 U.S. 678, 690 (2001) (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 v. Kim*, 538 U.S. 510, 528 (2003).

51. In *Demore* the Court emphasized that, for detention under the statute to be reasonable, it must be for a brief period of time. *See, e.g.,* 538 U.S. at 528 (detention permissible because, as compared to *Zadvydas,* "the detention here is of a much shorter duration"). Justice Kennedy explained in his concurrence that "[w]ere there to be an unreasonable delay by the INS in pursuing and completing deportation proceedings, it could become necessary then to inquire whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Id.* at 532–33 (Kennedy, J., concurring).

52. Following *Zadvydas* and *Demore*, federal courts have found either the immigration statutes or due process require a hearing for adult noncitizens subject to unreasonably prolonged

detention pending removal proceedings. *See, e.g.*, *Black v. Decker*, 103 F.4th 133, 147-58 (2d Cir. 2024); *Hernandez-Lara v. Lyons*, 10 F. 4th 19, 28-35 (1st Cir. 2021).

53. The Flores Settlement Agreement, TVPRA, and the Foundational Rule all establish that the detention of immigrant children requires greater care and more restrictions upon the government than that of adult detention such as taking into account their best interest. In this regard, the TVPRA regulations mandate that UIC be released promptly to the least restrictive setting that is in their best interest. In the case of a close relative such as a brother, promptly is no more than ten days.

54. K.A.V.O. has now been detained for over five months.

H. The Impact of the ORR New Document Policies

55. The inevitable result of the new policies is that sponsors are required to submit to onerous requirements such as DNA testing and home studies, even when there is ample proof of their qualification to sponsor their family members. Since March of 2025, the Respondents have applied the ORR New Document Policies to sponsors as "regulated parties," resulting in the continued separation of children from their families and their continued and lengthy institutional detention. Even more egregious, ORR also requires that every member of a potential sponsor's household also comply with the ORR New Document Policies.

56. In truth and in fact, the ORR New Document Policies seek to transform ORR from a program to foster child welfare into an immigration enforcement program that fosters the removal of undocumented sponsors and UIC.

57. The ORR New Document Policies are keeping K.A.V.O. and UIC like him detained and are unlawful. Under the TVPRA, ORR's function is to act in the best interest of the child; not to prioritize immigration enforcement. The TVPRA also directs ORR to place children in the least

restrictive setting that is in the best interest of the child. The ORR New Document Policies prevent ORR from complying with its congressional mandate.

58. The new ORR policies have resulted in longer detentions for minors and less reunifications with relative-sponsors – precisely the opposite of the intent of the TVPRA. Between October 2025 and February 2026, the length of the detention for the over 2300 minors in ORR custody increased from 166 to 195 days.[11] ORR releases almost none of the children in its custody. Significantly, only about **5% or 119 of the 2348 minors** in detention in February 2026 were released to sponsors; **2,229** remained detained.[12] In March 2026, only 228 or about 10% of the 2173 minors in detention were released to sponsors; **1,945 remained in custody.** *Id.* The average number of days in ORR custody for UIC released to sponsors in March 2026 was six and a half months. *Id.* UIC who remain in ORR custody have been detained an average of seven months. *Id.* ORR is blatantly violating its mandate.

59. Petitioner submits that the ORR New Document Policies have caused him to remain isolated from his family and remain in detention though he has an eligible sponsor willing to take him into their custody and care for him, which would be in K.A.V.O.'s best interest.

60. The current administration has made no secret of its wish to deport as many undocumented persons as possible, including UIC, without due process. The ORR New Document Policies are just one more tactic to achieve this goal. In practice, under the ORR New Document Policies, UIC are removed from their communities, isolated from their families, placed in facilities unequipped to ensure their welfare and effectively coerced into waiving their rights. Immigration Enforcement Agents are brought into sponsor interviews to intimidate potential sponsors and

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[11] *See* Office of Refugee Resettlement, Data, available at https://acf.gov/orr/about/ucs/facts-and-data#book_content_1 (last accessed March 19, 2026).

[12] *See* Office of Refugee Resettlement, Data, available at https://acf.gov/orr/about/ucs/facts-and-data#book_content_9 (last accessed March 19, 2026).

coerce them into desisting in their applications. These goals are plainly unlawful and a blatant violation of the TVPRA, which requires ORR to act in the best interest of the child; not to engage in immigration enforcement. Even the appearance of coordination between ORR and immigration-enforcement personnel intimidates undocumented but qualified sponsors into not sponsoring loved ones, contrary to the TVPRA's stated and sole goal of ensuring the children's best interest and welfare.

VI. Claims for Relief

COUNT I

Violation of the Trafficking Victims Protection Reauthorization Act
8 U.S.C. § 1232
(Custody must be in the "least restrictive setting" in the "child's best interest")

61. Petitioner incorporates paragraphs 1 to 60 by reference as if they were stated and set forth herein.

62. Through the ORR New Document Policies and ORR's administrative failures to promptly process sponsorship applications, the Respondents have kept the Petitioner in custody in violation of his rights under the TVPRA.

63. The TVPRA requires that Respondents place Petitioner in the least restrictive setting that is in his "best interest." 8 U.S.C. § 1232(c)(2)(A). This is presumptively with "a suitable family member," who can provide for his physical and mental well-being. *Id.* ORR regulations affirm "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, whenever feasible, is in the best interests of unaccompanied children." 89 Fed. Reg. at 34440.

64. The ORR New Document Policies and consequently, ORR's administrative failures to properly process applications presumptively disqualify and stall Petitioner's brother from

completing the sponsorship process, although he can provide the least restrictive setting that is in Petitioner's best interest. Therefore, according to TVPRA regulations, custody of Petitioner must be transferred to his brother. 45 C.F.R. § 410.1201. Yet the Respondents refuse to release the Petitioner to his brother based on the ORR New Document Policies, which are completely unrelated to Petitioner's "best interest" or the mandate of the TVPRA.

65. By unnecessarily delaying Petitioner's sponsor's application process, Respondents are maintaining Petitioner in their custody, which is not the least restrictive setting that is the "best interest," of K.A.V.O., in violation of the Petitioner's rights under the TVPRA.

66. The Petitioner is thus entitled to release under 28 U.S.C. § 2241.

COUNT II

Violation of the Trafficking Victims Protection Reauthorization Act
8 U.S.C. § 1232
(Release must occur "promptly" and "without unnecessary delay")

67. Petitioner incorporates paragraphs 1 to 60 by reference as if they were stated and set forth herein.

68. Under the TVPRA, the government must release alien children in its custody "promptly." 8 U.S.C. § 1232(c)(2). "Prompt" means "[d]one quickly, immediately, or at the right time; performed without delay" Black's Law Dictionary (12th ed. 2024).

69. Likewise, under TVPRA regulations, the Respondents must release the alien children "without unnecessary delay," 45 C.F.R. §§ 410.1200, 1201.

70. These commands are strict: "without unnecessary delay" means that ORR shall ordinarily adjudicate a sponsorship application within 10 days for a close relative, 14 days otherwise. *Id.* § 410.1205(b). ORR may deny a sponsorship only if it determines that the sponsor

cannot provide for the "well-being" of the child or that placement with the sponsor would endanger the child or the community. *Id.* § 410.1205(a).

71. These regulations obligate ORR to release the Petitioner to his brother unless the Respondents have notified the brother of a decision that relies upon evidence subject to appellate challenge supporting a valid reason not to release. *Id.* §§ 410.1205-1206. Respondents have not done so.

72. Further, ORR's administrative failures preventing K.A.V.O.'s brother from scheduling appointments to fulfil steps that should be discretionary and inapplicable to K.A.V.O.'s situation precisely constitutes an unnecessary delay.

73. By taking over 10 days to release Petitioner to his brother, a close relative, and by not supplying a valid, evidence-based decision for denying release, the Respondents are violating the Petitioner's rights under the TVPRA.

74. Under 28 U.S.C. § 2241, the Petitioner is entitled to release.

COUNT III

Violation of the Fifth Amendment
(Deprivation of Liberty Without Due Process—Family Separation)

75. Petitioner incorporates paragraphs 1 to 60 by reference as if they were stated and set forth herein.

76. The Fifth Amendment of the United States Constitution guarantees that no person shall "be deprived of life, liberty, or property, without due process of law."

77. The substantive component of the Due Process Clause protects liberty against "certain government actions regardless of the fairness of the procedures used to implement them." *Daniels v. Williams*, 474 U.S. 327, 331 (1986). The government may not infringe 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).

78. At the apex of this substantive protection is the right of children to live with their close family members. *See Moore v. City of E. Cleveland*, 431 U.S. 494, 500 (1977) (recognizing a fundamental right "concerning family living arrangements"). Familial association is "perhaps the oldest of the fundamental liberty interests" protected by the substantive component of due process. *Troxel v. Granville,* 530 U.S. 57, 65 (2000); *see also Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (holding that close family member have a constitutional right to live together without government interference); *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."); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) ("[t]he history and culture of Western civilization" establishes the "strong tradition" of protecting families and allowing parents a primary role over "the nurture and upbringing of their children"; it is "an enduring American tradition"); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) ("[i]t is cardinal … that the custody, care and nurture of the child reside first in the parents"); *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) ("[t]he child is not the mere creature of the State").

79. Government action seeking to break the familial bond "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder v. Mass.*, 291 U.S. 97, 105 (1934). Whether the focus is on the child or the adult family member, the interest of both in familial association is fundamental: "the child and [her] parents share a vital interest in preventing erroneous termination of their natural relationship." *Santosky v. Kramer*, 455 U.S. 745, 760 (1982). "[S]o long as a parent adequately cares for his or her children

(i.e. is fit), there will normally be no reason for the State to inject itself into the private realm of the family…." *Id.* at 68.

80. ORR did not provide a compelling state interest to justify why DNA tests and home studies are required when they have not identified any discrepancies or issues in the sponsor's application.

81. Respondents' refusal to grant custody of K.A.V.O. to his brother violates Substantive Due Process as guaranteed to him by the Fifth Amendment of the United States Constitution. Therefore, K.A.V.O. is entitled to release under 28 U.S.C. § 2241.

COUNT IV

Violation of the Fifth Amendment
(Deprivation of Liberty Without Due Process—Indefinite Detention)

82. Petitioner incorporates paragraphs 1 to 60 and 75 to 81 by reference as if they were stated and set forth herein.

83. "[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). Thus, as a matter of substantive due process, the Petitioner has a liberty interest in freedom from *institutional* custody, even though minors are "always in some form of custody."

Schall v. Martin, 467 U.S. 253, 265 (1984); see *Lucas R. v. Becerra*, No. 18-5741, 2022 WL 2177454, at *14 (C.D. Cal. Mar. 11, 2022) (finding that ORR policies for placing minors in more restrictive facilities violated due process because minors have liberty interest in freedom from institutional custody).

84. The Petitioner's interest in freedom from institutional custody is particularly pronounced as his detention lengthens. The Supreme Court has warned that institutional detention of adults for six months or longer may deprive them of the liberty interest protected by due process unless the government supplies a detainee-specific justification. *Zadyvydas v. Davis,* 533 U.S. 678 (2001).

85. The Petitioner is a child who has been detained for over five months. To a child, five months may appear even longer than for adults. Therefore, the substantive presumption from *Zadyvydas* applies at least as strongly to K.A.V.O. Here the government has not provided any detainee-specific justification for prolonging Petitioner's detention.

86. Courts have found that family separation and prolonged detention harm children. *See, e.g., Jacinto-Castanon de Nolasco*, 319 F. Supp. 3d at 502 (determining that family "[s]eparation irreparably harms plaintiffs every minute it persists"); *Andreiu v. Ashcroft,* 253 F.3d 477, 484 (9th Cir. 2001) (*en banc*). In view of this finding, ORR is obligated under the TVPRA to determine the suitability of a close family member for sponsorship "without unnecessary delay," that is within 14 days. 45 C.F.R. §410.1201. Failure to do so violates the TVPRA regulations and K.A.V.O.'s right to be free from unjustified detention.

87. Respondents have not identified a permissible justification specific to Petitioner, such as flight risk or dangerousness that justifies his continued detention. *Zadyvydas, supra.* 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. Petitioner's sponsor has demonstrated himself as a capable and willing sponsor to care for Petitioner, according to the requirements of law. Moreover, K.A.V.O.'s sponsor is in fact capable, proper, and fit, and Petitioner presents no flight risk.

88. Respondents' reliance on the ORR New Document Policies, including DNA testing and home study requirements which are unnecessary and were not subject to notice and comment, resulted in his prolonged and indefinite detention; and therefore, violates his Fifth Amendment right to liberty and freedom from unjustified institutional custody.

89. Respondents continued detention of Petitioner under these circumstances violates his due process rights under the Fifth Amendment, entitling him to release under 28 U.S.C. § 2241.

COUNT V

Violation of the Fifth Amendment
(Deprivation of Liberty Without Due Process—Procedural Fairness)

90. Petitioner incorporates paragraphs 1 to 60, 75 to 81, and 82 to 89 by reference as if they were stated and set forth herein.

91. The right to due process also contains a procedural component that constrains the process by which the government may deprive a person of a legally protected liberty interest. *See Matthews v. Eldridge,* 424 U.S. 319, 332 (1976). Due process requires that the government 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).

92. The fairness of any governmental decision-making process involves a familiar balancing test: (1) assessing the private interests, that is, Petitioner's interest in family unity and

freedom from institutional detention; (2) the risk of an erroneous deprivation of that interest without added procedural safeguards; and (3) the government's countervailing interest. *See Matthews v. Eldridge,* 424 U.S. at 335.

93. Based on the balancing of these three factors, the ORR New Document Policies are unconstitutional and the Petitioner should be released.

94. First, as established, the Petitioner's interest in his liberty is profound and clear. It is based on his constitutional right to familial association and freedom from institutional detention. It is also rooted in the TVPRA's assignment of nondiscretionary duties to the Respondents. The Respondents must release Petitioner from institutional custody unless "a suitable family member is not available to provide care." 8 U.S.C. § 1232(c)(2)(A). They must also "promptly place[]" each child **in the least restrictive setting** that is in the child's the "best interest." *Id.* (emphasis added). When, as here, constitutional and statutory dictates contain "specified substantive predicates" eliminating agency discretion, the beneficiaries—like the Petitioner—have a protected liberty interest. *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 463 (1989).

95. Second, the risk of an erroneous deprivation of that constitutionally protected interest—the disqualification of an otherwise suitable sponsor—based on the ORR New Document Policies is high. The ORR New Document Policies place unnecessary administrative hurdles in the way of granting custody to the Petitioner's brother, even though his identity, relationship to the Petitioner, and ability to care for the Petitioner are not in doubt.

96. Finally, the government's interest in retaining custody of the Petitioner at this point is low. By law, ORR's duty is *not* in enforcing immigration policy against others. Its only duty is to safeguard the well-being of Petitioner. The government has and can continue to comply with its duty through the verification of foreign-issued identification documents, background checks,

and fingerprint checks. In addition, it can verify a sponsor's ability to care for a UIC without requiring tax returns, paystubs or employer's employment letters. Thus, the government's interest in the Petitioner's well-being requires his release from institutional detention and reunification with his brother.

97. The Respondents detention of Petitioner based on the procedural requirements imposed by the ORR New Document Policies denies him a prompt and accurate resolution of his claims for release. The detention thus violates the Petitioner's rights to due process under the Fifth Amendment. He is entitled to release under 28 U.S.C. § 2241.

COUNT VI

Substantive Violation of the Administrative Procedure Act
5 U.S.C. § 706(2)(A)-(B)
(ORR New Document Policies are Arbitrary and Capricious and
in Violation of Constitutional Rights)

98. Petitioner incorporates paragraphs 1 to 60, 75 to 81, 82 to 89, and 90 to 97 by reference as if they were stated and set forth herein.

99. The APA, 5 U.S.C. § 551 et seq., authorizes suits by "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant strategy." *Id.* § 702. The APA requires courts to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "contrary to constitutional right, power, privilege, or immunity." *Id.* § 706(2)(A)-(B).

100. The ORR New Document Policies are final agency actions because they are "the consummation of the agency's decision-making process" and determine "rights and obligations" and create "legal consequences." *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997). Final agency action is subject to judicial review. 5 U.S.C. §§ 551(4), (13); *id.* § 706(2)(A); *see also Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 17 (2020).

101. The Supreme Court has instructed that "the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotations omitted). An agency action is arbitrary or capricious if the agency "has relied on factors which Congress had not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Zero Zone, Inc. v. United States DOE*, 832 F.3d 654, 668 (7th Cir. 2016) (quoting *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007)).

102. In enacting the ORR New Document Policies, ORR failed to consider the impact of the policies on K.A.V.O. and UIC and their reliance on the previous policies.

103. Because ORR immediately implemented the ORR New Document Policies, which revised preexisting policies as well as conflicted with representations made on its FRA, it needed to "assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns." *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 33 (2020). ORR knew that the new document requirements would significantly impact children and their sponsors who acted in reliance on the previous documentation policies as well as pursuant to the representations by ORR on its FRA. The impact was particularly damaging to K.A.V.O., who traveled to the United States with the expectation that his brother could sponsor him. And in fact, but for the ORR New Document Policies, K.A.V.O. would have been released into his custody. ORR changed the document requirements without warning, without notice and comment, and applied them to K.A.V.O.'s proposed sponsor.

104. ORR had an obligation to consider the impact its new policies would have before changing the *status quo*. Not only did it not consider its impact on UIC and their reliance on the status quo, but it also failed to consider other less burdensome alternatives. *Cf. FCC v. Prometheus Radio Project*, 592 U.S. 414, 417 (2021) (applying arbitrary-and-capricious review to the FCC's weighing of a policy factor even though the FCC was not statutorily required to consider that factor).

105. The reasons advanced by ORR for its new document policy are wholly unsupported by the evidence. The government failed to provide a plausible explanation for the ORR New Document Policies; therefore, it necessarily follows that the new policies are unsupported by a rational explanation. *Cf. Alpharma, Inc. v. Leavitt*, 460 F.3d 1, 5–6 (D.C. Cir. 2006).

106. The ORR New Document Policies are so irrational that they cannot be ascribed to agency expertise. ORR drastically changed its proof of identification and proof of income requirements without any explanation, without waiting to lawfully update the FRA, and without any consideration for the reliance interests of sponsors and UIC, the impact on children's length of detention, or less burdensome alternatives to verify sponsor identity and proof of income. These changes are arbitrary and capricious and violate K.A.V.O.'s substantive due process rights. Therefore, Petitioner is entitled to release under 28 U.S.C. § 2241.

107. The ORR New Document Policies are arbitrary and capricious. They result in denials of sponsorship based on failure to provide documentation that has no rational connection to ORR's mandate under the TVPRA. This is in direct contradiction to years of ORR policy and the Foundational Rule, without any reasoned explanation. Additionally, the ORR New Document Policies are arbitrary and capricious because, in adopting the new document requirements, Defendants failed to take into account important aspects of the problem such as the impact on

children's length of stay in custody in direct controversy to the child's welfare and right to expedited family reunification. ORR has failed to articulate a reasoned explanation for its decision, failed to consider reasonable alternatives to the new requirements, failed to take into account reliance interests, and offered no reasonable explanation for their decision other than pretextual explanations that run counter to other immigration policies. *See Angelica S. v. United States HHS,* 786 F. Supp. 3d 158, 173-175 (D.D.C. 2025) (finding at the preliminary injunction stage that it was substantially likely that the ORR new sponsorship documentation requirements were arbitrary and capricious because ORR provided little to no explanation as to how it weighed findings against relevant factors).

108. The ORR New Document Policies are in fact law enforcement policies that do not align with ORR's mandate under the TVPRA. Their intent is to keep children in custody by prohibiting family members, who are otherwise qualified, from serving as sponsors. But Congress removed UIC from the custody of a law enforcement agency and placed them in the custody of ORR, with a clear mandate that it prioritize the well-being of the children – not law enforcement.

109. Additionally, the ORR New Document Policies are contrary to the Fifth Amendment of the U.S. Constitution and in violation of K.A.V.O.'s rights to familial association and freedom.

110. Petitioner has suffered and will continue to suffer irreparable injury as a result of these unlawful policies implemented by Respondents, as alleged herein. Therefore, K.A.V.O. is entitled to be released to his sponsor under 28 U.S.C. § 2241.

COUNT VII

Procedural Violation of the Administrative Procedure Act
(ORR New Document Policies Promulgated Without Complying with Rule-Making Procedures)

111. Petitioner incorporates paragraphs 1 to 60 by reference as if they were stated and set forth herein.

112. The APA requires courts to hold unlawful and set aside any agency action taken "without observance of procedure required by law." 5 U.S.C. § 706(2)(D). These rulemaking procedures are required before engaging in actions that impact substantive rights. *See* 5 U.S.C. § 553.

113. HHS is an agency, 5 U.S.C. § 551(1), and ORR is a division of this agency.

114. Respondents promulgated the ORR New Document Policies, drastically changing their policies regarding what documents ORR would accept as proof of identification and income without following proper rulemaking procedures as required by the APA. This action resulted in unnecessary delays in Petitioner's reunification with his family, resulted in his prolonged detention, and is a violation of the APA's rulemaking requirements. Therefore, K.A.V.O. is entitled to be released to his sponsor under 28 U.S.C. § 2241.

Requests For Relief

Petitioner respectfully urges that this court:

1. Assume jurisdiction over this matter;

2. Declare that Petitioner's current detention is unlawful;

3. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody to the custody of his sponsor forthwith;

4. Prohibit the Respondents from transferring Petitioner from the district without the court's approval;

5. Prohibit the Respondents from requiring K.A.V.O.'s sponsor to submit to DNA testing and a home study;

6. Award Petitioner his attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

7. Grant any further relief this court deems just and proper.

Respectfully submitted,

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