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

S.D.C.G.C. and M.J.G.C., minors, by and through their next friend, [redacted]

Petitioners/Plaintiffs,

v.

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

Respondents/Defendants

Case No. 4:26-CV-3981

PETITIONERS' REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR SUMMARY JUDGMENT

Petitioners S.D.C.G.C. and M.J.G.C., by and through their next friend [redacted] respectfully submit this Reply to Respondents' Response to Petitioners' Petition for Writ of Habeas Corpus and Motion for Summary Judgment.

Respondents argue that Petitioners are lawfully in the custody of ORR because of a requirement that their sponsor submit issuance of an Individual Taxpayer Identification Number from the IRS – and that this requirement somehow has a bearing on the safety of the children and suitability of their sponsor to care for them. This position is not supportable by common sense, much less applicable law and policy. Respondents are not entitled to judgment as a matter of law.

Petitioners S.D.C.G.C. and M.J.G.C. are two young children who have suffered immensely due to their prolonged detention. Their sponsor and maternal aunt, Ms. [redacted], has complied with every requirement to prove her relationship to the children and suitability to provide for their physical and mental well-being. By Respondents' own admission, the only thing explaining the continued detention of these children is the fact that the IRS has yet to issue an ITIN to Ms. [redacted] Yet, Ms. [redacted] has taken the necessary steps to obtain one, having requested it 5 months ago, in December 2025; and the IRS's failure to timely act on her application has no bearing on her ability to care for these children.

Respondents state that "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." Dkt. 7 at 4. They dedicate multiple pages of their pleading to explaining ORR's policies and processes. Yet, nowhere in the pleading have they alleged that there is a safety concern preventing them from reunifying these two children with their aunt. To the contrary, the declaration of the Toby Biswas attached as Exhibit 1 to Respondents' pleading actually supports Petitioners' arguments that ORR is violating its own mandate by continuing to detain these children—as it provides an incredibly lengthy and detailed timeline of the numerous requirements Ms. [redacted] has fulfilled in this process. Dkt. 7-1.

ORR's continued detention of SDCGC and MJGC for three hundred and ninety-six days – over a year – because of a delay caused by the IRS is unconscionable, against ORR's policies and practices, and a clear violation of ORR's statutory and regulatory responsibility to "promptly" place the children in the "least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A); 45 C.F.R. §§ 410.1003(f), 410.1205(b) (family member sponsor applications must be adjudicated within 10-14 days). Like the Petition, Respondents' pleading shows very clearly that Ms. [redacted] is a suitable sponsor for S.D.C.G.C. and M.J.G.C.

Respondents' pleading references the One Big Beautiful Bill Act's allocation of funds to ORR for background checks, including tax payer identification numbers; however, the text of the legislation indicates that funding "may" be used by ORR for that cost, among multiple other types of costs. By no means does it *require* ORR to insist on 5-month-delayed ITINs to release vulnerable children to fully vetted sponsors, like in the case at hand. Moreover, ORR has already carved out exceptions to the ITIN requirement in its UAC Bureau Policy Guide and has also waived the requirement in other cases. ORR can easily do so here as well.[1]

[1] There also is no indication that Ms. [redacted] even faces the possibility of being denied an ITIN, as the IRS website makes clear that individuals can qualify for one regardless of their immigration status, and ORR has already confirmed that she submitted the correct Form W-7 along with her passport to the IRS in December. It is merely a formality at this point.

Finally, it bears emphasizing that this case involves not only the prolonged detention of two young children, but also Respondents' collusion with the Department of Homeland Security to detain Ms. [redacted] *because* she came forward to sponsor two unaccompanied children. This detention occurred at her home in April 2026, while she was still waiting on the IRS to issue her ITIN, after she had complied with all of the other sponsorship requirements, and after S.D.C.G.C. and M.J.G.C.'s pro bono attorneys sent a litigation demand to ORR, seeking to resolve this case amicably. ORR then tried to deny Ms. [redacted] sponsorship application because of the detention they themselves caused.[2] Respondents' pleading attempts to downplay this egregious circumstance, which caused Petitioners grave suffering. Two more litigation demands thereafter, and ORR has yet to uphold its mission to release children "in a safe, efficient, manner without unnecessary delay" in accordance with the UAC Bureau Policy Guide.

Even after being detained—and immediately upon her release from detention—Ms. [redacted] has continued to communicate and cooperate with ORR and done everything asked of her in order to sponsor her niece and nephew out of ORR custody. Both she and her Alternate Caregiver redid their fingerprints—

[2] Notably, there are factual inaccuracies in Toby Biswas's declaration as to the timeline of the sponsor's release from detention and ORR's retaliatory efforts to deny her sponsorship, as the undersigned counselor personally notified ORR staff on May 5, 2026 that Ms. [redacted] was granted bond and on May 6, 2026 that she was released from detention, thus creating a genuine issue of material fact, among other issues in this case.

again—as their background checks had expired for a second time through no fault of their own, and the sponsorship application is once again complete and ripe for adjudication by ORR.

S.D.C.G.C. and M.J.G.C.'s continued detention violates the substantive and procedural due process protections of the Fifth Amendment, the Administrative Procedure Act, the *Accardi* doctrine, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, and the Immigration and Nationality Act and its implementing regulations. S.D.C.G.C. and M.J.G.C. respectfully ask this Court to order their immediate release to the custody of Ms. [redacted] in Texas, or to the least restrictive community placement available. Petitioners further ask the Court to deny Respondents' motion for summary judgment and to solicit further arguments at the May 29, 2026 hearing.

Dated: May 28, 2026

Respectfully submitted,

/s/ Alexa Sendukas
Alexa Sendukas
Attorney-in-Charge
Texas Bar No. 24093133
SDTX No. 2688022
Galveston-Houston Immigrant
Representation Project
P.O. Box 36329
Houston, Texas 77236
Phone: 713-588-1648
Email: AlexaS@ghirp.org

/s/ Frances Bourliot
Frances Bourliot
Texas Bar No. 24062419
SDTX No. 1093213
P.O. Box 36329
Houston, Texas 77236
Phone: 713-481-3040
Email: bourliotlaw@gmail.com

Pro Bono Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Alexa L. Sendukas
Alexa L. Sendukas
Attorney for Petitioners