UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

J.S.P.A, a minor, by and through his next friend and attorney, Jocabed Rosario,

Petitioner-Plaintiff,

v.

ROBERT F. KENNEDY, JR., in his official capacity as Secretary of Health and Human Services; ANGIE SALAZAR in her official capacity as Acting Director of the Office for Refugee Resettlement; MARJORIE VICTOR, in her official capacity as Federal Field Specialist, Office of Refugee Resettlement; CRAIG LONGLEY, in his official capacity as CEO of Catholic Guardian Services.

Respondents/Defendants.

Civil Case No.: 26 Civ. 5903 (VSB)

PETITIONER-PLAINTIFF'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT

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INTRODUCTION

Respondents have detained J.S.P.A for 442 days. They have refused to release him to his father, a sponsor who was approved after undergoing their extensive and invasive vetting process on two separate occasions. Despite these approvals, Respondents have continued to separate the 16-year-old child from his family. Throughout prolonged detention, Respondents have never determined that J.S.P.A was in need of increased supervision or stepped-up placement. Rather, since May 2025, Respondents have repeatedly indicated that J.S.P.A was on the brink of imminent release, and his shelter placement recommended him for release. Yet, ORR has unreasonably denied his release due to an unsubstantiated determination that he is a danger to himself or his community. To justify this decision, Respondents cite minor behavioral incidents and an alleged "spontaneous" confession. In Respondents' response, they argued that J.S.P.A should remain in detention indefinitely as an appeal process – one without a timeline and that may or may not lead to his release – occurs. Respondents argue that this is not a due process violation nor is it contrary to their binding statutes and regulations that instruct for a prompt release that is in the best interest of the child.

While Respondents argue Petitioner should exhaust all resources for appeal of the denial, this is not required by statute and is not a proper remedy for the multiple due process violations in this matter. Moreover, the timeline for a risk determination hearing with no guaranteed outcome of release – even if no risk is determined – makes this process futile. As ORR has not detailed any plan toward release, it can be reasonably inferred that ORR's position is that J.S.P.A should be indefinitely detained and separated from his father. This is a clear violation of J.S.P.A's due process rights of family integrity, freedom, and liberty, as well as a violation of the TVPRA, Foundational Rule, and the *Accardi* Doctrine.

ARGUMENT

I. Petitioner is not Required to Exhaust all Administrative Resources

As Respondents acknowledge, 28 U.S.C. § 2241 does not have a statutory exhaustion requirement. While District Courts have held that exhaustion is necessary in some immigration detention contexts, this is not the case when a child is detained in ORR custody. *See Maldonado v. Lloyd*, No. 18 Civ. 3089 (JFK), 2018 WL 2089348, at *10 (S.D.N.Y. May 4, 2018) (finding that the petitioner raised "substantial constitutional question" under the Fifth Amendment and therefore "the Court will not require exhaustion"); *E.F.E.L. v. Noem*, 26 Civ. 02507, 2026 WL 1045550, at *5 (N.D. Ill. Apr. 17, 2026) (rejecting that exhaustion precluded judicial review of UAC habeas petition); *A.N.P.S. v. Salazar*, No. 25 Civ. 14778, 2025 WL 3707333, at *6 (N.D. Ill. Dec. 22, 2025) (declining to require UAC who was re-detained in ORR custody to exhaust administrative remedies).

The exceptions to the exhaustion requirement are outlined when "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004); *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (internal quotation marks omitted).

These exceptions apply in this case. First, Petitioner has raised a substantial constitutional question as to due process of the Fifth Amendment. J.S.P.A's prolonged detention and separation from his father violates the long-standing protected interest of family integrity. *See Maldonado v. Lloyd.*

Second, the prolonged detention of a child causes irreparable injury. The harms of detention on the mental health of children are well documented.[1]

Third, the appeal process does not guarantee adequate relief and is futile. For example, if J.S.P.A requested a Risk Determination Hearing in front of an Administrative Law Judge with the Department Appeals Board the hearing would be conducted by the same agency that delayed his father's sponsorship request and determined he should not be released. If the hearing was favorable to J.S.P.A., ORR could appeal the decision. Even if the Hearing was favorable to J.S.P.A and ORR chose to not appeal, a Hearing Officer has authority to delay the release of a child until ORR identities a suitable sponsor. *See* Section 2.9 of the ORR Unaccompanied Alien Children Bureau Policy Guide. If the decision was unfavorable to J.S.P.A., then the burden unfairly shifts to J.S.P.A.'s father to prove the denial is in error and the detention is unjustified. *Id.* at Section 2.7.8. J.S.P.A.'s due process rights place the burden on ORR to justify their indefinite detention. The refusal to release J.S.P.A. to his father, the least restrictive setting, must stay on ORR. For these reasons, the appeal process is futile, wrongly place the burden on J.S.P.A or his father, and continues to prolong J.S.P.A's unjust detention.

II. The Only Appropriate Remedy is the Immediate Release of J.S.P.A to his Father

As exhaustion is not necessary, this court should order immediate release of J.S.P.A to his father in order to respect their due process rights of family unity and to fulfill Respondents' non-discretionary duty under the TVPRA and Foundational Rule to promptly place J.S.P.A "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). Respondents' violations of their own regulations is a violation of the Administrative

[1] *Punishing Trauma: Incident Reporting and Immigrant Children in Government Custody,* The Young Center (2022), https://www.theyoungcenter.org/wp-content/uploads/2025/03/20220921FINALSIRREPORT-HYPERLINKED-1.pdf

Procedure Act (APA) and *Accardi* Doctrine. 5 U.S.C. §§ 702, 706; *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

A. J.S.P.A's Prolonged Indefinite Detention is a Due Process Violation

Immigrants, including children, are protected by the due process clause, including as to their liberty interest in family integrity. *See Zadvydas v. Davis*, 533 U.S. 678, 698 (2001); *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025); *In re Gault*, 387 U.S. 1, 13 (1967); *Reno v. Flores*, 507 U.S. 292, 316 (1993); *D.B. v. Cardall*, 826 F.3d 721, 740 (4th Cir. 2016); *Lucas R. v. Becerra*, No. 18-cv-5741, 2022 WL 2177454, at *25 (C.D. Cal. March 11, 2022); *J.E.C.M. v. Lloyd*, 352 F. Supp. 3d 559, 585 (E.D. Va. 2018); *Troxel v. Granville*, 530 U.S. 57, 65 (2000). The "right to the preservation of family integrity encompasses the reciprocal rights of both parent and children." *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977). Additionally, children have a "constitutionally protected liberty interest in not being dislocated from the emotional attachments that derive from the intimacy of daily family association." *Kia P. v. McIntyre*, 235 F.3d 749, 759 (2d Cir. 2000) (internal quotation marks and alteration omitted); *see also Southerland v. City of New York*, 680 F.3d 127, 142 (2d Cir. 2012) (parents "have a constitutionally protected liberty interest in the care, custody and management of their children" (quoting *Tenenbaum v. 21 Williams*, 193 F.3d 581, 593 (2d Cir. 1999)).

There is no doubt that Respondents' actions have "encroached" upon J.S.P.A's right to family integrity "considerably." *See Beltran v. Cardall*, 222 F. Supp. 3d 476, 482 (E.D. Va. 2016). Respondents' detention of J.S.P.A for 442 days has already separated him from his father for an unreasonable amount of time and continues to violate his due process rights.

B. J.S.P.A's Prolonged Detention Violates the TVPRA and Foundational Rule

The TVPRA requires that J.S.P.A. be placed promptly in the least restrictive setting, one that is in his best interests, typically with a family member. 8 U.S.C. § 1232(c)(2)(A). After 442-days of detention, ORR has failed to demonstrate prompt efforts toward J.S.P.A's release, as required by the TVPRA and Foundational Rule, 45 C.F.R. § 410.1203(a). As documented in his father's declaration, ORR repeatedly delayed the sponsorship process through no fault of his own. J.S.P.A's father responded quickly to each requirement and ORR led him to believe that his son would be released to him imminently.

> "I had begun to express to Yesenia [ORR contracted agent] my doubts about whether I should continue to be the sponsor for my son given how long it was taking and given that other family friends might have an easier time completing the mounting number of requirements being placed on me and my family. My son was desperate to leave custody and was expressing signs of depression. On August 19, 2025 told me that the "federal agents accepted everything," and that they were now only waiting for my partner's identification to be accepted, encouraging me to continue with the reunification process." J.S.P.A's Father's Declaration at ¶ 37.

J.S.P.A's father was given false hope that his son would soon return home only to be met with arbitrary delays.

> "Yesenia informed me that she had submitted J.S.P.A.'s case for release approval on August 24, 2025 and that her supervisor, [redacted], had given his positive recommendation. She explained that two additional people had to review the request, and they had 48 hours to do so. She said, "I hope that [J.S.P.A.] returns home this week." I was so happy to finally hear this news."
> *Id.* at ¶ 40

Between September 23, 2025, and November 13, 2025, ORR failed to communicate with J.S.P.A.'s father, even after he was told to prepare to pick his son up from ORR custody. *Id.* at ¶¶47-50.

Respondents argue that J.S.P.A's father failed to meet one requirement to schedule an appointment for identity verification. Biswas Decl. ¶¶ 62-63. ORR and its agents communicated this new requirement to J.S.P.A's father on November 14, 2025, seven months after he started the second sponsorship process. Ten days later, on November 24, 2025, ORR informed J.S.P.A.'s

father that this requirement may be waived for him. J.S.P.A's Father's Declaration at ¶ 50. ORR failed to provide any further communication or instructions regarding the requirement. Moreover, J.S.P.A's father was approved for sponsorship without the appointment for identity verification. *Id.* at ¶ 59; Best Interest Determination at pg.8. The practice of in-person vetting appointments is not a requirement in the ORR Unaccompanied Alien Children Bureau Policy Guide. Rather it comes from recent field guidance, where the requirement is waivable for parents as Category 1 sponsors. UACB Field Guidance ("UACB Field Guidance"), 24, available at https://acf.gov/orr/policy-guidance/uc-program-field-guidance.

ORR must make and record prompt and continuous efforts toward a child's release. 45 C.F.R. § 410.1203(a). ORR is also required to promptly place a child "in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A); *see also* 45 C.F.R. § 410.1003(f). The least restrictive setting here is release from ORR custody to a vetted sponsor. *See* 8 U.S.C. § 1232(c)(2)(A); 45 C.F.R. § 410.1209(e); *Saravia v. Sessions*, 905 F.3d 1137, 1143 (9th Cir. 2018). ORR repeatedly and intentionally delayed the vetting process of J.S.P.A's father. The ongoing detention of J.S.P.A. continues to violate the Foundational Rule and the TVPRA.

C. Respondents Have Failed to Meaningfully Contest Petitioner's APA and *Accardi* Claims

Respondents failed to follow their own regulations, policies, and statutory requirements. J.S.P.A has been in a non-restrictive placement for over one year waiting for release to his approved sponsor. Facility staff have recommended J.S.P.A for release twice, on August 19, 2025, and February 27, 2026, the second with the recommendation of the Federal Field Specialist and the approval of J.S.P.A's father as a sponsor. *See* Best Interest Determination at pg 8. Respondents violated J.S.P.A.'s regulatory rights under the APA by failing to abide by their statutory mandate to promptly release him to the least restrictive setting and by arbitrarily and

capriciously imposing unjustified new requirements on J.S.P.A.'s father's sponsorship application. The UACB Field Guidance policy, imposing in-person verification appointments and heightened requirements for sponsorship are in direct conflict with the purpose of the TVPRA and Foundational Rule. *Air All. Houston v. Environmental Protection Agency*, 906 F.3d 1049, 1064 (D.C. Cir. 2018) (holding that rule delaying effectiveness of Clean Air Act regulation was contrary to the very purposes of the act). District courts have regularly permitted similar APA challenges to ORR policies that impact children's opportunities for release. See, e.g., *Angelica S. v. U.S. Department of Health and Human Services*, 786 F. Supp. 3d 158, 172- 75 (D.D.C. 2025); *L.V.M. v. Lloyd*, 318 F. Supp. 3d 601, 612 (S.D.N.Y. 2018); J.E.C.M., 352 F. Supp. 3d at 582-84.

Further, Respondents' failure to release J.S.P.A to an approved sponsor violates their own "existing valid regulations" to place J.S.P.A in the least restrictive setting that is in his best interests. *See Accardi,* 347 U.S. at 268; 45 C.F.R. § 410.1003 (f); 8 U.S.C. § 1232(c)(2)(A). There is currently no efforts being made toward J.S.P.A's release, a clear violation of the *Accardi* doctrine.

The failure to release J.S.P.A. to his father violates the APA and the *Accardi* Doctrine for all reasons stated in the original petition as it goes against statutory requirements and regulations to release unaccompanied children to the least restrictive setting that is in their best interests.

D. ORR's Dangerousness Analysis Fails

Respondents denied J.S.P.A's release to his father after finding that J.S.P.A. was a danger to self or others, based on nothing more than a dismissed juvenile delinquency charge and behavior typical of detained teenagers. Notably, despite any alleged concerns regarding J.S.P.A., ORR has failed to place J.S.P.A. into a more restrictive setting.

The Commonwealth of Massachusetts dismissed J.S.P.A's juvenile delinquency charge on September 22, 2025. Under Massachusetts law, records related to a juvenile delinquency charge, are sealed. *See* Mass General Law chapter 119 sections 60A and 65. In their response to Petitioner's Habeas Petition, Respondents improperly introduced a police report, connected to the sealed records, which must not be considered. The United States Supreme Court has held that "[t]he mere fact that a man has been arrested has very little, if any, probative value in showing that he engaged in any misconduct. An arrest shows nothing more than that someone probably suspected the person apprehended of an offense." *Schware v. Bd. Of Bar Examiners*, 353 U.S. 232, 241 (1957). *See also Michelson v. U.S.*, 335 U.S. 469, 482 (1948) ("Arrest without more does not, in law any more than in reason, impeach the integrity or impair the credibility of a person. It happens to the innocents as well as the guilty.").

In 2018, this District Court addressed delays in the release of children who were previously in staff secure placements. In its decision to grant a preliminary injunction, this Court found that "[s]uch a substantial increase in the detention period to accommodate the ORR's director review policy, which has no defined purpose, is a clear violation of the TVPRA's mandate to promptly place the UAC in the least restrictive setting that is in the best interests of the child." *L.V.M. v. Lloyd*, 318 F.Supp.3d 601, 614 (S.D.N.Y. 2018)

Similarly, the District Court in *Flores* held that this same policy created unnecessary delays in release. *See Flores v. Sessions*, 2018 WL 10162328, at *20(C.D. Cal. July 30, 2018) ("Defense Counsel admitted in a letter to Plaintiffs' attorneys that "UAC in non-secure shelter care are unlikely to benefit from a [bond] hearing as ORR likely would concede to an immigration judge that such UAC are not a danger and may be released upon the determination of a suitable sponsor." See Sept. 12, 2017 Letter from Sarah Fabian at 4, Pls.' Ex. 90 (emphasis added) [Doc. # 434-1].

J.S.PA is similarly situated to the members of *LVM* and *Flores*, as he was in a staff secure placement and now resides in a shelter-level placement. The extra review of dangerousness that ORR conducted after both his father was approved as a sponsor and Catholic Guardian and his FFS recommended release, is a delay similar to the ORR's director review policy. Following these litigations, Respondents took the position that automatic bond hearings were not necessary for children placed in shelter settings because ORR had already determined they were not a danger. *See Flores v. Rosen*, 984 F.3d 720, 735 (9th Cir. 2020) (permitting opt-out rather than opt-in bond hearing for children in non-restrictive placements because "because ORR has determined that these minors do not present a safety or flight risk" and "[t]hese minors remain in custody only because a suitable custodian has not yet been found"). Respondents cannot now change their position that a child in shelter level custody presents a safety or dangerousness risk. *See New Hampshire v. Maine*, 532 U.S. 742, 750 (2001) (judicial estoppel generally precludes a party from changing positions in litigation when: (a) a party's later position is "'clearly inconsistent' with its early position;" (b) "the party has succeeded in persuading a court to accept that party's earlier position;" and (c) the party would "derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. As stated in the regulations ORR notes that for the great majority of unaccompanied children in ORR custody, it has determined they are not a danger and therefore has placed them in non-restrictive placements such as shelters and group homes. These unaccompanied children remain in ORR care only because a suitable sponsor has not yet been found and approved." 89 Fed. Reg. at 34569.

Respondents conflate their arguments related to delay and denial based on dangerousness. Respondents connect their delay in release to their responsibility to properly vet sponsors. However, ORR approved J.S.P.A's father as a sponsor and, in ORR's denial, there was no

reference to his sponsorship. J.S.P.A's Father's Declaration at ¶ 59; Best Interest Determination at pg. 8. ORR based its denial solely on an assessment of J.S.P.A's dangerousness to himself and/or others. However, there was no factual or logistical basis to support this assessment. In practice, if a child is deemed dangerous to himself and/or others, ORR places the child in a more secure placement. Here, J.S.P.A "has shown that he is not a danger to himself or the community as he has maintained a continued placement in a shelter, the least restrictive setting." Best Interest Determination at pg. 9.

The behavioral incidents cited in Respondents' reply are minor incidents that do not reflect out of the ordinary behavior from a teenager who is detained. The stress of detention on a child's psyche is well documented.[2] The behavioral incidents must be taken in the context of J.S.P.A's detention and the stress of the delayed reunification process with his father. *See Santos v. Smith*, 260 F.Supp. 3d 598 (W.D. Va. 2017) (granting habeas to UC after behavioral incidents and an alleged confession occurred, with strong consideration of the effect on the prolonged detention on the child's behavior in ORR custody). In 2019, the HHS Office of Inspector General reported concerns from ORR facilities that "longer stays resulted in higher levels of defiance, hopelessness, and frustration among children, along with more instances of self-harm and suicidal ideation." Dep't of Health & Hum. Servs., Office of the Inspector Gen., Report No. OEI-09-18-00431, at 12 (2019). At that time, the highest monthly length of custody was 93 days in November 2018. Id. at 13. The average length of custody has now reached over 190 days. *See* ORR, Average Monthly Data, https://acf.gov/orr/about/ucs/facts-and-data. J.S.P.A has been detained for 442 days.

Additionally, these behavioral incidents must be viewed in light of the fact that they were documented by staff at Children's Village, a shelter that has since been closed due to allegations

[2] *See Are You Listening? Youth Accounts of Congregate Placements in New York State*, Children's Rights (Jan. 2023), https://www.childrensrights.org/wp-content/uploads/2024/07/CR-2023-AreYouListening_report.pdf.

of staff abuse of children.[3] J.S.P.A was abruptly removed from Children's Village due to these abuse allegations. The only incident cited at Catholic Guardian, his current shelter, is an alleged confession in February 2026. This alleged confession came "spontaneously" to a clinician, days after his new placement at Catholic Guardian. The alleged confession is not included in the clinician's initial notes drafted of her meeting with J.S.P.A. Rather, it is only included in an amendment that was drafted subsequent to the initial note. Further, the alleged confession is written in language and quotes that fail to mirror any other language J.S.P.A has used to describe the incident to his Young Center advocate, his attorney, or in other ORR clinician notes. J.S.P.A confirmed to his Young Center advocate that he did not make this statement to the clinician. *See* Best Interest Determination at pg. 7. Further, the alleged confession transcribed in the clinician's amended note detailing the alleged statement should be considered double hearsay and inadmissible as evidence. Fed. R. Evid. 804.

The Commonwealth of Massachusetts dismissed J.S.P.A's juvenile charges. J.S.P.A's shelter and his Federal Field Specialist recommended his release, his father has been approved as his sponsor twice, and ORR's own position is that unaccompanied children in shelter setting have already been determined as not dangerous to self or others. Yet, ORR continues to hold J.S.PA indefinitely, with no plan of action toward release.

Conclusion

For the foregoing reasons, J.S.P.A requests the Court grant his petition and complaint.

[3] Ana Ley, *Migrant Children Removed From New York Shelter After Abuse Allegations*, The New York Times (April 18, 2026), https://www.nytimes.com/2026/04/18/nyregion/migrant-children-shelter-abuse.html.

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Respectfully submitted,

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Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c), the undersigned counsel hereby certifies that this memorandum complies with the allocated word limit of 3,500 words. As measured by the word processing system used to prepare it, and excluding the items set forth in the rule, there are 3497 words in this memorandum.

Grace Day