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

D.A.G.M. Petitioner, 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; JESUS MARTINEZ, Program Director, Maryville Academy-St. Gabriel, Respondents.	Case No. 1:26-cv-9971

PETITION FOR A WRIT OF HABEAS CORPUS

COMES NOW D.A.G.M., 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

1. D.A.G.M., the Petitioner, is a 17-year-old immigrant child whom the Respondents have detained for almost **ten months** since he entered the United States in October of 2025. Respondents have separated D.A.G.M. from his older brother, who resides in this country, and refused to file a sponsorship application, despite the fact that his brother is willing and able to sponsor him, and wants to relieve D.A.G.M. from his isolation. The Petitioner seeks release from government detention into the custody of his brother.

2. The Trafficking Victims Protection Reauthorization Act ("TVPRA") mandates that the government "promptly" release the 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). D.A.G.M.'s brother can provide that setting. By retaining custody of D.A.G.M. and separating him from his brother, who can safely provide for him, Respondents are violating the TVPRA and D.A.G.M.'s Fifth Amendment right to due process.

3. The TVPRA requires that Respondents act on sponsors' applications from close relatives such as an adult sibling—**within 10 days**. 45 C.F.R. § 410.1205(b); 45 C.F.R. § 410.1001. Despite his brother's willingness and ability to sponsor him, Respondents have unjustifiably kept D.A.G.M. in their custody and away from his brother for almost **ten months**, to the detriment of Petitioner's mental and emotional health.

4. Respondents have delayed release based on a newly created policy promulgated without notice and comment that requires sponsors to furnish US-issued forms of identification, which D.A.G.M.'s brother lacks. The government no longer permits sponsors to provide their foreign-issued identification documents. The ORR facility where D.A.G.M. was first placed, BCC Caminos Cunningham Children's Home in Urbana, Illinois, refused to assist D.A.G.M's brother with the filing of a sponsorship application because his brother did not meet the newly created identification requirement. In February 2026, D.A.G.M. was transferred to Maryville St. Gabriel for Boys Long Term Foster Care in Des Plaines, Illinois ("Maryville"). On August 6, 2026, the National Immigrant Justice Center ("NIJC"), D.A.G.M.'s counsel, also requested that Maryville start a sponsorship application. As of this date, Maryville has refused to even start the application process because the brother does not have U.S. government identification.

5. The delay in D.A.G.M.'s release and the new policy requiring US-issued identification is unlawful. First, the policy conflicts with the TVPRA, which permits foreign-issued forms of identification because the foreign origin of a valid identity document is unrelated to a sponsor's suitability or to the best interest of the child. The delay is also unlawful because it contravenes the TVPRA's time limit provisions. The delay and new policy also violate D.A.G.M.'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 policy violates the Administrative Procedure Act ("APA") as it is arbitrary and capricious, violates constitutional law, fails to consider the impact of the policy on unaccompanied minors or their reliance on the previous policy, and did not follow proper rulemaking procedures.

6. Therefore, pursuant to § 2241, D.A.G.M. respectfully requests that he be released into the custody of his brother forthwith.

I. The Parties

7. The Petitioner D.A.G.M. is a minor immigrant child from Guatemala who entered the United States on or about October 29, 2025, and was unaccompanied by an adult when he was detained. Respondents have detained D.A.G.M. for ten months.

8. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security ("DHS"), and as such, has authority over the detention of D.A.G.M. as a custodian. He is sued in his official capacity.

9. Respondent Robert F. Kennedy Jr. is the Secretary of the Department of Health and Human Services ("HHS"). He has authority over the Office of Refugee Resettlement ("ORR"), a division of HHS that directly oversees, controls, and manages the detention of unaccompanied

immigrant children ("UIC"), including D.A.G.M., and as such is a legal custodian. He is sued in his official capacity.

10. Respondent Angie Salazar is the Acting Director of the ORR, and as such, directly oversees, controls, and manages the detention of UIC, including D.A.G.M. She is a custodian of the Petitioner. She is sued in her official capacity.

11. Respondent Jesus Martinez is the Program Director of Maryville Academy-St. Gabriel in Des Plaines, Illinois ("Maryville"), the immediate custodian of D.A.G.M. He is sued in his official capacity.

II. Jurisdiction, Venue, and Exhaustion

12. 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.*

13. The Petitioner has standing to sue based on his separation from his brother and 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-Castanon de Nolasco v. ICE*, 319 F. Supp. 3d 491, 502 (D.D.C. 2018) (finding indefinite separation of families not a compelling government interest, therefore giving the plaintiff standing to sue). Further, Maryville has refused to file a sponsorship application because Petitioner's brother lacks a US-issued identification. Thus, Petitioner 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").

14. 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.

15. Venue is proper in the Northern District of Illinois under 28 U.S.C. § 2241 and § 1391(b)(2) because the Petitioner is in the 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).

16. 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 that 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 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 leading Petitioner to believe that an administrative challenge will lead to his prompt release to his sponsor who lacks the domestic documents that Respondents are demanding based on a policy that has not been subject to notice and comment. 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

17. 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 a 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.* 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). *See also, Ruiz v. Cady*, 660 F.2d 337, 340 (7th Cir. 1981)("Congress has directed that habeas petitions be reviewed forthwith, ...and the United States Supreme Court has emphasized that habeas corpus proceedings are intended to provide swift, flexible, and summary determinations.")(internal citations omitted).

IV. Case-Specific Facts

18. D.A.G.M. is a 17-year-old child from Guatemala. Federal officials detained D.A.G.M. on or around October 29, 2025, and deemed him a minor unaccompanied by an adult.

19. D.A.G.M. was initially placed in Cunningham Children's Home in Urbana, Illinois ("BCC Caminos"). BCC Caminos staff discouraged D.A.G.M's brother from pursuing a sponsorship application because his brother did not meet the newly created identification

requirement. In February of 2026, ORR transferred D.A.G.M. to Maryville, a Long-Term Foster Care ("LTFC") program in Des Plaines, Illinois. Maryville staff refuses to assist D.A.G.M.'s brother with the filing of a sponsorship application because he does not meet the newly created identification requirement.

20. D.A.G.M.'s placement in an LTFC program is significant. LTFC programs are reserved for children classified as Category 4—that is, children who ORR has determined lack a viable sponsor, and therefore, expects to remain in custody until they age out, obtain legal relief, are transferred to another facility, or are removed from the country. Although LTFC allows children like D.A.G.M. to attend a local public high school — placement in LTFC nonetheless constitutes detention, which curtails D.A.G.M.'s freedom, ability to socialize with his peers, and, importantly, his contact with his family.

21. A conclusion that D.A.G.M. has "no potential sponsors" is plainly erroneous, given that D.A.G.M. has an older brother willing and able to sponsor him. Since his detention began, Respondents have restricted Petitioner's freedom to move and otherwise engage in normal activities for children.

22. On August 6, 2026, NIJC staff requested that Maryville start a sponsorship application process for Petitioner's brother. As of the date of this filing, Maryville has not filed an application and refuses to even commence the process because D.A.G.M.'s brother does not have a U.S. government issued identification.

23. Separated from family, his physical health and mental well-being have significantly deteriorated. D.A.G.M. is experiencing detention fatigue and is constantly anxious about his future and wants to be able to live with his brother.

24. D.A.G.M. has a pending petition for Special Immigrant Juvenile Status ("SIJS") with United States Citizenship and Immigration Services ("USCIS"), based on the finding of an Illinois probate court that it would be in his best interests to remain in the United States. D.A.G.M. has viable legal relief pathways available to him, making his continued detention even less justified.

25. The urgency of D.A.G.M.'s situation cannot be overstated. If he is not released from ORR custody and reunified with his brother, D.A.G.M. faces a removal order despite having a pending SIJS application, a willing and qualified sponsor, and no criminal history or flight risk. His physical removal from the country would render this petition—and his right to family reunification under the TVPRA—moot. Release from ORR custody would allow D.A.G.M. to pursue his SIJS application as a non-detained individual, where continuances to await USCIS adjudication are routinely granted.

26. D.A.G.M. remains detained and isolated from his family, far from his brother who lives in Tennessee. D.A.G.M. needs family reunification now.

27. Petitioner seeks his immediate release from institutional custody to the custody of his brother. "[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). His brother is among those people "whom our society and this Court's jurisprudence have always presumed to be the preferred and primary custodians of their minor children." *Reno v. Flores*, 507 U.S. 292, 310 (1993). This court has the authority to condition Petitioner's release to his brother until Respondents reach a decision about sponsorship that does not violate the law.

V. Legal Framework

28. 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

29. 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").

30. 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.

31. 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).

32. 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

33. The Homeland Security Act of 2002 ("HSA") abolished the INS and transferred the care of UIC, like D.A.G.M., 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).

34. When UICs 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

35. 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, a class-action decree approved in 1997 to expedite family reunification of detained UIC. *See Flores v. Sessions*, 862 F.3d 863, 869-71 (9th Cir. 2017). 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).

36. 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.

37. 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 Hum. 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

38. 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).

39. 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.*

40. "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."[1] 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, any delay of more than 10 days is unnecessary. *Id.* at §410.1205(b).

41. 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 forbid 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 Changes in ORR Document Policies

42. On February 27, 2026, without following normal rule-making procedures or providing an explanation, ORR changed its Background Check Requirements to include proof of a domestic identification, such as SSN or ITIN. Prior to this change, proof of an SSN or ITIN was not required.

43. This change followed a series of drastic changes ORR has made to its policies. 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,[2] birth certificates, and

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

[2] 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).

national ID cards, from its list of acceptable identification documents for prospective UIC sponsors.[3]

44. 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 added to the section that "Federal staff must exhaust all available avenues to verify the authenticity of birth certificates." *Id.* This can cause significant delays for children from countries of origin where there is no functioning consulate in the United States.

45. 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.[4] In practice, sponsors and children have reported having to wait weeks or even months for a DNA appointment.[5]

46. 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 guide now requires potential sponsors to submit either (1) the previous year's tax return; (2)

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[3] 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).

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

[5] 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.

paystubs from the last 60 days; or (3) a letter from the sponsor's employer verifying salary and employment.[6]

47. 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.

48. 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") personnel 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.'"[7]

49. Taken together, these new requirements ("ORR New Document Policies") represent an insurmountable obstacle for sponsors and a bar to child reunification with qualified sponsors as mandated by the TVPRA. 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).

50. ORR's own child welfare experts have long stated that the 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*, 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*

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[6] 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).

[7] Priscilla Alvarez, Exclusive: Federal law enforcement to begin interviewing unaccompanied migrant children in government custody (Aug. 8, 2025), https://www.cnn.com/2025/08/08/politics/exclusive-federal-law-enforcement-to-begin-interviewing-unaccompanied-migrant-children-in-government- custody.

Average Monthly Data: Average Length of Care, https://acf.gov/orr/about/ucs/facts-and-data (last updated August 18, 2025).

51. 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-and-data. 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, 217 in April, 191 days in May, 154 days in June, 171 days in July, and 182 days in August.[8]

F. Restrictions Upon UIC in ORR Custody

52. Children in ORR detention have their freedoms significantly restricted. While D.A.G.M. attends a local public high school through the LTFC program, he remains in ORR custody and is subject to the restrictions and oversight attendant to that detention.

53. Children in ORR custody are unable to freely interact with family members, as many, like D.A.G.M., are held in districts located far away from where their family members live.

54. Children in ORR custody are guaranteed 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.

55. "Research has shown that separation from a caregiver for even a short period of time can be traumatic for a child."[9] "Children often suffer from 'detention fatigue', particularly

[8] *See* Petition filed in *K.A.P.L. vs. Angie Salazar, et al.*, 26cv2477, Dkt. No. 1, at 12, U.S. Dist. Court for the N.D. Ill.

[9] 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/).

during long stays in ORR custody, with symptoms of increased stress, anxiety, behavior issues, and self-harm or suicidal ideation."[10] "Children in [longer stays] may experience psychological distress, stemming from a sense of helplessness, limited agency, and lack of trauma-informed care."[11]

56. 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 . . ."[12] 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.*

57. Mental health clinicians document that a child's mental health often deteriorates as the length of stay in ORR custody increases. *Id.* at 12. Research and reports tell us that "children's experiences in immigration custody are associated with increases in psychological distress and functional impairment" including "increases in depression, anxiety, traumatic stress symptoms, and behavioral difficulties—sometimes leading to thoughts, urges, and acts of self-harm and suicidality—associated with children's experiences of immigration detention." *Id.* at 16.

58. D.A.G.M. has suffered from detention fatigue and has exhibited severe symptoms of increased stress and anxiety due to the uncertainty and helplessness created by his prolonged detention. D.A.G.M. reports that he often feels very stressed and feels helpless about not being

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[10] *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.

[11] *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).)).

[12] 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.

with his brother. Despite his deteriorating emotional state, D.A.G.M. continues to go through the motions of attending school, but his demeanor reflects the toll of prolonged separation from his family. Having been detained for almost ten months, transferred between facilities, and classified as having "no potential sponsors" despite having a brother willing to care for him, D.A.G.M. has grown increasingly discouraged. Petitioner's brother resides far from D.A.G.M. in Tennessee.

G. Prolonged Detention of Immigrant Children

59. Due process, therefore, requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas 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). 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).

60. 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).

61. While the standard for prolonged detention for adults appears to be generally six months (180 days), 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 interests. 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 an adult sibling, promptly is no more than two weeks.

62. D.A.G.M. has now been detained for almost **ten months**.

G. The Impact of the ORR New Document Policies

63. The inevitable result of the new policies is that sponsors who do not have U.S. work authorization or who lack an SSN/ITIN cannot satisfy the new policies, despite being otherwise qualified to sponsor family members. Since March 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.

64. Respondents have stated publicly that some unnamed countries are difficult to contact, and some sponsors have used fraudulent foreign documents. The stated reasons are pretextual: the government continues to accept and require foreign-issued identity documents in a vast number of immigration-related contexts. For example, if the sponsors applied for temporary protected status, non-immigrant visas, permanent residency, asylum, or individual taxpayer identification numbers, the government would expect and accept the foreign-issued documents it rejects in the UIC sponsorship context.

65. In truth and in fact, the ORR New Document Policies seek to transform ORR from a program to support child welfare into an immigration enforcement program that fosters the removal of undocumented sponsors and UIC. ORR's refusal to release D.A.G.M. makes this clear.

66. The ORR New Document Policies are keeping D.A.G.M. and UIC like him detained. The ORR New Document Policies are unlawful. The ORR New Document Policies are particularly pernicious in D.A.G.M.'s case, where Respondents refuse to even file a sponsorship application. Under the TVPRA, ORR's function is to act in the best interest of the child; not to prioritize immigration enforcement. The TVPRA 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 statutory mandate.

67. 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 June 2026, the length of detention for the minors in ORR custody increased from 166 to 194 days.[13] ORR releases almost none of the children in its custody. In June 2026, **only 146, or about 8%** of the 1,796 minors in detention, were released to sponsors.[14] The average number of days in ORR custody for UIC released to sponsors in June 2026 was just under six and a half months. *Id.* UICs who remain in ORR custody have been detained an average of 6.4 months. *Id.* ORR is blatantly violating its mandate.

68. Petitioner submits that the ORR New Document Policies have caused him to remain isolated from his family and remain in detention, though his brother is willing to take him into his custody and care for him, which would be in D.A.G.M.'s best interest.

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[13] *See* Office of Refugee Resettlement, Data, available at https://acf.gov/orr/about/ucs/facts-and-data#book_content_1 (last accessed July 8, 2026).

[14] *See* Office of Refugee Resettlement, Data, available at https://acf.gov/orr/about/ucs/facts-and-data#book_content_9 (last accessed July 8, 2026).

69. The current administration has made no secret of its wish to deport as many undocumented persons as possible, including UICs. The ORR New Document Policies are just one more tactic to achieve this goal. In practice, under the ORR New Document Policies, UICs 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 coerce them into desisting from 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.

I. The All Writs Act

70. The All Writs Act provides that "the Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). *See also Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 31 (2002). Thus, pursuant to the All Writs Act, this Court has the authority to order the government not to transfer Petitioners out of its jurisdiction. *See L.Z.R. v. Mullin*, Case No. 26-04371, Dkt. No. 3 (ordering the government not to remove Petitioners from the jurisdiction of the United States and not to transfer them outside of the Northern District of Illinois pursuant to the Court's authority under the All Writs Act) (citing *A.A.R.P. v. Trump*, 605 U.S. 91, 97 (2025) (per curiam); *United States v. United Mine Workers of Am.*, 330 U.S. 258, 293 (1947)); *Z.O. v. Mullin*, Case No. 26cv04794, Dkt. No. 8 (same).

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")

71. Petitioner incorporates paragraphs 1 to 70 by reference as if they were stated and set forth herein.

72. Through the ORR New Document Policies, the Respondents have kept the Petitioner in custody in violation of his rights under the TVPRA.

73. Through the Respondents' policy of having immigration-enforcement authorities participate in the sponsor-vetting process, the Respondents have kept the Petitioner in custody, further violating his rights under the TVPRA.

74. 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.

75. The ORR New Document Policies presumptively disqualified Petitioner's brother even though he is who he purports to be—the older brother of the Petitioner—and he can provide the least restrictive setting that is in Petitioner's best interest. The ORR New Document Policies have unlawfully prolonged D.A.G.M.'s detention. The Respondents' continued refusal to release the Petitioner to his brother violates the TVPRA.

76. The Respondents' policy of including immigration-enforcement officials in the vetting process also violates the Petitioner's rights under the TVPRA. Their inclusion has needlessly delayed Petitioner's reunification with his brother.

77. The ORR New Document Policies and ORR's inclusion of immigration officials in the sponsor-vetting process contravenes not only the TVPRA but also its regulations. The TVPRA's regulations explicitly provide that the government may determine identity by using non-U.S.-issued documents: "ORR may consult with the issuing agency (e.g., consulate or embassy) of the sponsor's identity documentation to verify the validity of the sponsor's identity document presented." 45 C.F.R. § 410.1202(b).

78. By requiring US-issued forms of identification from Petitioner's sponsor to file a sponsorship application, Respondents are unlawfully keeping Petitioner in their custody, which is not the least restrictive setting that is in the "best interest" of D.A.G.M., in violation of the Petitioner's rights under the TVPRA.

79. By involving immigration-enforcement officers in the sponsor-vetting process, Respondents are maintaining custody of Petitioner in a manner that is not in his "best interest," further violating the Petitioner's rights under the TVPRA.

80. 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")

81. Petitioner incorporates paragraphs 1 to 70 by reference as if they were stated and set forth herein.

82. Under the TVPRA, the government must release immigrant 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).

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

84. 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).

85. 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.

86. By refusing to assist Petitioner's brother in filing the sponsorship application the Respondents are violating the Petitioner's rights under the TVPRA.

87. 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)

88. Petitioner incorporates paragraphs 1 to 70 by reference as if they were stated and set forth herein.

89. 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."

90. 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).

91. 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 members 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) ("[T]he 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)("The 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. Mass.*, 321 U.S. 158, 166 (1944) ("It 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) ("The child is not the mere creature of the State.").

92. 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. Massachusetts, 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 [his] 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. . . ." *Troxel*, 530 U.S. at 68. Even if a requirement of U.S.-issued identification documents might serve a valid government purpose in some contexts, it does not disqualify a capable family member from custody over a child.

93. ORR did not provide a compelling state interest to justify why foreign-issued identification documents are insufficient proof of identity when they are valid in other immigration contexts.

94. Respondents' refusal to grant custody of D.A.G.M. to his brother violates Substantive Due Process as guaranteed to him by the Fifth Amendment of the United States Constitution. Therefore, D.A.G.M. 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)

95. Petitioner realleges the foregoing allegations and by reference as if they were stated and set forth herein.

96. "[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). 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 a liberty interest in freedom from institutional custody).

97. 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. *Zadvydas v. Davis*, 533 U.S. 678 (2001).

98. The Petitioner is a child who has been detained for ten months. To a child, ten months may appear even longer than for adults. Therefore, the substantive presumption from *Zadvydas* applies at least as strongly to D.A.G.M. Here, the government has not provided any detainee-specific justification for prolonging Petitioner's detention.

99. Courts have found that family separation and prolonged detention harms 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 10 days. 45 C.F.R. §410.1201. Failure to do so violates the TVPRA regulations and D.A.G.M.'s right to be free from unjustified detention.

100. Respondents have not identified a permissible justification specific to Petitioner, such as flight risk or dangerousness, that justifies his continued detention. *Zadvydas*, 533 U.S. at 690-91. 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 brother is capable and willing to care for Petitioner, according to the requirements of law. Moreover, Petitioner's brother is in fact capable, proper, and fit, and Petitioner presents no flight risk. ORR's reliance on the ORR New Document Policies, the requirements of which D.A.G.M.'s sponsor can never meet, resulted in D.A.G.M.'s prolonged and indefinite detention; and therefore, violates his Fifth Amendment right to liberty and freedom from unjustified institutional custody.

101. 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)

102. Petitioner realleges the foregoing allegations and by reference as if they were stated and set forth herein.

103. 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 Mathews 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. *Id.* at 335. 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).

104. 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 Mathews*, 424 U.S. at 335.

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

106. First, as established, 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 "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. *See Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 463 (1989).

107. 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 have unlawfully delayed the consideration of Petitioner's brother as a qualified sponsor.

108. Finally, the government's interest in retaining custody of the Petitioner at this point is low. By law, ORR's duty is *not* to enforce immigration policy against others. Its duty is to safeguard the well-being of the Petitioner. The government has and can continue to comply with its duty through the verification of identification documents, background checks, fingerprint checks, and DNA testing. Thus, the government's interest in the Petitioner's well-being requires his release from institutional detention and reunification with his brother.

109. 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. 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

Violation of the Fifth Amendment

(Deprivation of Equal Protection)

110. Petitioner realleges the foregoing allegations and by reference as if they were stated and set forth herein.

111. The Fifth Amendment's right to due process includes an equal protection component applicable to the federal government. *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954).

112. Equal protection requires that the government supply a rational basis for treating undocumented aliens differently from documented aliens. *Plyler v. Doe*, 457 U.S. 202, 205 (1982).

113. The Respondents' refusal to file a sponsorship application based on the brother's lack of U.S.-issued identification documents, where they would otherwise grant custody to the sponsor, is irrational and has no relation to ORR's mandate under the TVPRA.

114. The ORR New Document Policies are irrational because the government can and does validate identity through foreign-issued identifications in a wide variety of immigration-related contexts. The government would accept or even require foreign-issued identification documents from any alien—including the sponsor of the Petitioner—if he sought temporary protected status, non-immigrant visas, permanent residence, asylum, or an individual taxpayer identification number. Given the universal acceptance of foreign-issued identification documents elsewhere, the refusal to accept them here to seek an eligibility determination of a sponsor violates the Equal Protection Clause by treating holders of U.S. issued identification documents differently from holders of foreign-issued identification documents without a rational justification.

115. Because the ORR Document Policy is irrational, it violates the Petitioner's Fifth Amendment rights to equal protection, entitling him to release under 28 U.S.C. § 2241.

COUNT VII

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)

116. Petitioner realleges the foregoing allegations and by reference as if they were stated and set forth herein.

117. 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 statute." *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).

118. 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).

119. 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)).

120. In enacting the ORR New Document Policies, ORR failed to consider the impact of the policies on UICs like D.A.G.M. and their reliance on the previous policies.

121. Because ORR immediately implemented the ORR New Document Policies, which revised preexisting policies 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 D.A.G.M., whose brother seeks to sponsor him but has been precluded by the US-issued identification requirement imposed after D.A.G.M. entered the United States. ORR changed the document requirements without warning, without notice and comment, and applied them to D.A.G.M.'s proposed sponsor.

122. 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).

123. 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).

124. The government accepts foreign-issued identification documents in many other contexts, such as in applications for temporary protected status, non-immigrant visas, permanent residency, asylum, or individual taxpayer identification numbers. In all these processes, the government would expect and accept the very foreign identification documents it now refuses to accept in the context of qualifying sponsors for undocumented minors. The government's willingness to accept foreign identification documents in these contexts but rejects them in the

context of qualifying sponsors for detained unaccompanied children under the TVPRA violates D.A.G.M.'s due process rights.

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

126. 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, Respondents failed to consider important aspects of the problem, such as the impact on children's length of stay in custody, in direct contradiction 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 consider reliance interests, and offered no reasonable explanation for its 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's new sponsorship documentation requirements were arbitrary and capricious because ORR provided little to no explanation as to how it weighed findings against relevant factors).

127. 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 UICs 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.

128. Additionally, the ORR New Document Policies are contrary to the Fifth Amendment of the U.S. Constitution and in violation of D.A.G.M.'s rights to familial association and freedom.

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

COUNT VIII

Procedural Violation of the Administrative Procedure Act

(ORR New Document Policies Promulgated Without Complying with Rule-Making Procedures)

130. Petitioner realleges the foregoing allegations and by reference as if they were stated and set forth herein.

131. 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.

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

133. 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 and his prolonged detention and is a violation of the APA's rulemaking requirements. Therefore, D.A.G.M. is entitled to be released to his brother 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 brother forthwith;
4. Issue an Order prohibiting the Respondents from transferring Petitioner outside the district without the court's approval;
5. Prohibit the Respondents from requiring US-issued identification documents from D.A.G.M.'s brother as a condition for filing and reunification, and from including immigration-enforcement officials in the sponsor vetting process; award Petitioner his attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
6. Grant any further relief this court deems just and proper.

Respectfully submitted,

s/ Charles Roth _____ Date: August 19, 2026

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