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

B.G.N.V., a minor, by and through his Next Friend, E.V.V.,

Petitioner,

v.

ROBERT F. KENNEDY, JR. in his official capacity as Secretary of Health and Human Services; ALEX J. ADAMS in his official capacity as the Assistant Secretary for the Administration for Children and Families; ANGIE SALAZAR, in her official capacity as Acting Director of the Office of Refugee Resettlement; ROCHELL POLLARD in her official capacity as the Regional Program Director of Children First Residential Care Gasmer; DAWNISHA HELLAND in her official capacity as Deputy Director of the Unaccompanied Alien Children Bureau of the Office of Refugee Resettlement; KHALILAH RAINEY in her official capacity as Division of Sponsor Administration Federal Field Specialist of Children First Residential Care Gasmer; ANA BABUDAR in her official capacity as Division of Case Administration Federal Field Specialist of Children First Residential Care Gasmer; U.S. DEPARTMENT OF HOMELAND SECURITY; and U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents.

Civil Action No. 4:26-cv-8418

EMERGENCY PETITION FOR A WRIT OF HABEAS CORPUS

BGNV petitions for a Writ of Habeas Corpus under 28 U.S.C. § 2241 and seeks relief under the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.*, from his continued unlawful detention by Respondents. As set forth below and in his accompanying motion for a temporary restraining order and preliminary injunction, BGNV requests an immediate hearing and release pending resolution of this Petition.

INTRODUCTION

1. The government is keeping a child from his mother and now refuses to say why. Petitioner BGNV is a seventeen-year-old boy from Honduras who came to the United States in December 2023 to reunite with his mother after years of violence, abuse, and exploitation while separated from her in his home country. At first, the system worked as Congress intended. Because BGNV arrived alone, the Office of Refugee Resettlement (ORR)—the federal child-welfare office responsible for unaccompanied immigrant children—took him into its care and, after approving his mother through its sponsorship process, reunited them. For nearly two years, BGNV lived with his mother and brothers in Austin, Texas, attended school, and began building the safer life they had sought together.

2. That changed in November 2025, after a lapse in judgment led BGNV to drive while intoxicated. No one was injured, and after spending five months in custody while the case remained pending, BGNV pleaded guilty to misdemeanor DWI and served the twenty-day sentence imposed by the court. He should have then returned home to the mother with whom he had lived for nearly two years. Yet, as he left Travis County jail, U.S. Immigration and Customs Enforcement (ICE)—the federal immigration-enforcement agency within the Department of Homeland Security (DHS)—was waiting for him. ICE took him into custody and sent him back to ORR. He has now spent more than 170 days detained at a shelter in Houston, Texas, while ORR refuses to reunify him with his mother and offers no explanation for keeping them apart.

3. The record offers no justification for keeping BGNV from his mother a day longer. Instead, every relevant development since his return to custody supports reunification. He has participated in counseling, earned strong school reports, and made concrete plans to complete his education. Shelter staff consistently described him as "calm, cooperative, [and] emotionally stable," and ORR itself concluded that he posed no danger to others and transferred him from a heightened supervision facility to a lower-security shelter. Ex. 18 at 6. His mother, meanwhile, again completed the sponsorship process—including another background check and intensive home study—and submitted her completed application more than two months ago.

4. The professionals closest to BGNV also supported reunification. After reviewing his behavior, treatment, and proposed placement, ORR officials found—notwithstanding his misdemeanor DWI—that he had "shown progress toward reunification[]" and recommended release "[b]ased on the totality of the circumstances[.]" *Id.* at 7-8. His ORR-appointed Child Advocate agreed, concluding that his mother could provide a safe home, that BGNV posed no present danger to himself or the community, and that continued family separation posed a substantial risk of psychological harm to the child.

5. Only one reviewer opposed reunification. Dawnisha Helland, Deputy Director of ORR's Unaccompanied Alien Children Bureau, recommended BGNV's continued detention without full consideration of the record. Helland—who also appears to be or recently was an acting ICE official—stated that BGNV had committed "multiple DUIs" and other offenses (even though his criminal record substantiates only a single misdemeanor DWI), and that he showed a "blatant disregard for the law" (even though respect for the law is not among the statutory factors ORR may consider in deciding whether to release him). *Id.* at 8-9. Helland thus recommended continued detention based on an unsupported account of BGNV's criminal record and a

character judgment untethered to the statutory dangerousness inquiry. That recommendation is arbitrary and capricious.

6. Yet the recommendation derailed the entire reunification process. On July 22, 2026, ORR placed BGNV's mother's sponsorship application in "remand" without explaining what that meant or what remained to be done. And nothing appears to have been done since. ORR has requested no additional information and issued no final decision. That delay violates ORR's own regulations and policies, which require the agency to adjudicate a parent's completed application within ten calendar days, absent an unexpected delay, and to conduct supervisory review within ninety days of a child entering ORR custody to identify and resolve the reasons for any continued delay and determine how to accelerate release. 45 C.F.R. §§ 410.1205(b), 410.1207(a). ORR has done neither. Instead, "remand" has become a black hole—one that keeps BGNV detained while depriving him of the final decision he needs to seek an appeal and hearing.

7. The delay in BGNV's case reflects a broader pattern in ORR custody cases. One report documents "nearly a six-fold increase in children's lengths of custody, and nearly an 80% decline in ORR's discharge rate, since January 2025[.]"[1] BGNV's experience bears out those troubling statistics. ORR has everything it needs to decide his mother's application—complete paperwork, a parent it previously approved, a vetted home, and overwhelming professional support for reunification. Still, BGNV remains confined without a decision.

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[1] Jonathan Beier, Ruben Ortiz, Kofi Forkuo-Sekyere, *Dismantling Protections: How ORR Policy Changes Trap Children in Extended Detention*, ACACIA Center for Justice (Sept. 1, 2025), *available at* https://acaciajustice.org/research-data/explainers/dismantling-protections-how-orr-policy-changes-trap-children-in-extended-detention/.

8. BGNV is now approaching a legal cliff. He turns eighteen on [redacted]. Once he does, ORR's sponsorship process will end, and DHS, which placed him in ORR custody as a child, will take him back into custody as an adult. And once BGNV is there, Helland's flawed dangerousness assessment would likely predetermine BGNV's fate in adult custody. By statute, DHS must evaluate the same dangerousness factor that ORR evaluates when deciding whether to release him. 8 U.S.C. § 1232(c)(2)(B). With Helland's assessment already in the file, DHS would have little reason to revisit the conclusion reached by one of its own. Thus, far from mooting this controversy, a transfer to DHS would expose BGNV to continued detention based on the same flawed assessment he challenges here.

9. Additionally, the controversy falls within the "capable of repetition, yet evading review" exception to mootness. *See Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 170 (2016). If turning eighteen is sufficient for the claims of unaccompanied minors in ORR custody to become moot, ORR will be able to repeat the same pattern of unconstitutional behavior against future children while avoiding judicial review.

10. BGNV has already accepted responsibility for his misdemeanor and served the sentence imposed by the court and deemed appropriate for the offense by the state legislature. Yet ORR continues to detain him while withholding the final decision its own rules require. That prolonged and unexplained delay now operates as a constructive denial of his mother's sponsorship application, leaving BGNV without notice, a hearing, or any meaningful opportunity to appeal. ORR is not a criminal court. Its role is to protect children, not to punish them anew, much less prolong that punishment until they age into adult detention. But unless the Court acts before [redacted], that is precisely what ORR's delay will accomplish. Immediate relief is warranted.

JURISDICTION & VENUE

11. Federal district courts have jurisdiction over habeas petitions brought by non-citizens challenging the lawfulness or constitutionality of their detention, as BGNV does here. *See, e.g.*, *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *see also* U.S. Const. art. I, § 9, cl. 2 ("The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.").

12. The Court also has jurisdiction under 28 U.S.C. § 1331 (federal question), § 1651 (the All Writs Act), and § 2241 (power to grant writ of habeas corpus), as well as 5 U.S.C. § 702 (the Administrative Procedure Act), because BGNV's claims arise under the Constitution and federal law and challenge the legality of his detention.

13. The Court also has authority under 28 U.S.C. §§ 2201 and 2202 (the Declaratory Judgment Act), and Federal Rule of Civil Procedure 65, to grant the declaratory and injunctive relief BGNV seeks, including immediate release from ORR custody and protection against transfer to DHS custody.

14. Venue is proper in the Southern District of Texas because a substantial part of the events giving rise to BGNV's claims occurred—and his detention continues—in this District.

15. Venue is also proper under 28 U.S.C. § 2241 because BGNV is currently detained within this District.

PARTIES

16. Petitioner BGNV is a seventeen-year-old child whom ORR has detained for more than 170 days at the Children First Residential Care Gasmer facility in Houston, Texas. He seeks release to reunify with his mother in Austin, Texas.

17. His mother, EVV, serves as his Next Friend and brings this Petition on his behalf.

18. Robert F. Kennedy, Jr. is the Secretary of the U.S. Department of Health and Human Services (HHS), a cabinet-level department of the United States Government. HHS includes ORR, a program office within the Department. As the Secretary of HHS, Respondent Kennedy exercises legal control over BGNV's custody and has authority to order his release. He is sued in his official capacity.

19. Alex J. Adams is the Assistant Secretary for the Administration for Children and Families at HHS. He is charged with the supervision and management of all decisions and actions of that agency and oversees ORR. Respondent Adams exercises legal control over BGNV's custody and has authority to order his release. He is sued in his official capacity.

20. Angie Salazar is the Acting Director of ORR, which is directly responsible for BGNV's detention. As the Acting Director of ORR, Respondent Salazar exercises legal control over BGNV's custody and has authority to order his release. Respondent Salazar is sued in her official capacity.

21. Rochell Pollard is the Regional Program Director of Children First Residential Care Gasmer. She likewise exercises legal control over BGNV's custody and has authority to order his release. Respondent Pollard is sued in her official capacity.

22. Dawnisha Helland is Deputy Director of ORR's Unaccompanied Alien Children Bureau. Additionally, as part of ICE's organizational realignments for the purpose of "arresting and deporting criminal illegal aliens[,]" Respondent Helland was appointed Acting Assistant Director of Enforcement and Removal Operations' Non-Detained Management Division.[2]

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[2] *US Immigration and Customs Enforcement announces leadership realignment as enforcement efforts continue to ramp up*, U.S. Immigration and Customs Enforcement (May 29, 2025), *available at* https://www.ice.gov/news/releases/us-immigration-and-customs-enforcement-announces-leadership-realignment-enforcement.

Consistent with that dual role, Respondent Helland has identified herself in recent court filings as a government official acting on behalf of ICE.[3] She oversees all national juvenile and family custody programs, including ICE's Family Residential Centers. Respondent Helland exercises legal control over BGNV's custody and has authority to order his release. Respondent Helland is sued in her official capacity.

23. Respondent Khalilah Rainey is a Division of Sponsor Administration Federal Field Specialist at Children First Residential Care Gasmer. Respondent Rainey is a government official responsible for making a sponsor suitability determination. Accordingly, Respondent Rainey exercises legal control over BGNV's custody and has authority to order his release. Respondent Rainey is sued in her official capacity.

24. Respondent Ana Babudar is a Division of Case Administration Federal Field Specialist at Children First Residential Care Gasmer. Respondent Babudar is a government official responsible for determining BGNV's placement and has the authority to approve his release to an appropriate sponsor's care. Accordingly, Respondent Babudar exercises legal control over BGNV's custody and has authority to order his release. Respondent Babudar is sued in her official capacity.

25. The Department of Homeland Security and the U.S. Immigration and Customs Enforcement arrested BGNV in April 2026 and transferred him to ORR, where he remains. When BGNV turns eighteen, he will be transferred to DHS custody, which is responsible for considering his placement in the least restrictive setting.

LEGAL FRAMEWORK

[3] *See, e.g.*, *Flores v. Blanche*, No. 2:85-cv-04544-DMG-AGR, Dkt. 1824 (C.D. Cal. Aug. 6, 2026); *id.* Dkt. 1760-1 (Apr. 17, 2026); *id.* Dkt. 1567-12 (May 22, 2025).

26. Understanding how BGNV came to remain in federal custody begins with the laws defining ORR's limited role. ORR's authority to detain unaccompanied children is temporary, limited only for the time needed to secure appropriate placement. Congress's statutory framework requires ORR to place such children promptly in the least restrictive setting consistent with their best interests. ORR's own regulations and policies reinforce that command through concrete deadlines and procedural safeguards.

A. Congress assigned child welfare and immigration enforcement to separate agencies.

27. The care and custody of unaccompanied immigrant children are governed by the Homeland Security Act, the Trafficking Victims Protection Reauthorization Act (TVPRA), and the ORR's "Foundational Rule" and policies. Together, these authorities make federal custody temporary and direct ORR toward a single objective: promptly securing the least restrictive placement in the child's best interest.

1. The Homeland Security Act separated the care of unaccompanied children from immigration enforcement.

28. Prior to 2002, the Office of Juvenile Affairs of the Immigration and Naturalization Service was charged with the contradictory task of caring for unaccompanied immigrant children while also enforcing and investigating legal and illegal immigration. The Homeland Security Act of 2002 therefore divided those functions among separate agencies. Pub. L. No. 107-296, 116 Stat. 2135 (2002). Congress transferred immigration enforcement to DHS, while assigning the care and custody of unaccompanied children to ORR. That division reflected Congress's judgment that "the federal government has a special responsibility to protect the children in its custody[]" and that "[u]naccompanied minors deserve special treatment under [federal] immigration laws and policies." 148 Cong. Rec. S11295 (Nov. 18, 2002); 148 Cong. Rec. S8180 (Sep. 4, 2002). Congress had criticized the Immigration and Naturalization

Service—a law-enforcement agency—for "fail[ing] in its responsibility to care for these vulnerable children." 148 Cong. Rec. S9670 (Oct. 1, 2002). ORR, by contrast, "is not a law enforcement agency[.]" Unaccompanied Children Program Foundational Rule, 89 Fed. Reg. 34399, 34423 (Apr. 30, 2024).

29. Consistent with that child-welfare role, ORR was charged with "implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status[.]" 6 U.S.C. § 279(b)(1)(A). In carrying out that responsibility, ORR must ensure "that the interests of the child are considered in decisions and actions relating to [] care and custody[.]" *Id.* § 279(b)(1)(B).

30. The Act defines "unaccompanied alien child" as a person under the age of eighteen who lacks lawful immigration status and either has "no parent or legal guardian in the United States" or has a parent or legal guardian here who is not "available to provide care and physical custody." *Id.* § 279(g). That same definition is incorporated in federal regulations governing the processing and detention of immigrant children. *See* 8 C.F.R. § 236.3.

31. When an immigrant child enters the United States, DHS officers must determine whether the child is an "unaccompanied child" at "the time of encounter or apprehension and prior to the detention or release of such alien." *Id.* § 236.3(d). Children determined to be unaccompanied are transferred to ORR custody. *Id.* § 236.3(f).

2. The TVPRA expanded protections for unaccompanied migrant children.

32. Years later, with strong bipartisan support, Congress enacted the TVPRA to ensure that DHS treated unaccompanied children as children, not adults or criminals, in both detention and immigration proceedings. 8 U.S.C. § 1232 *et seq.* Before the TVPRA, children were frequently "sent to detention facilities—often with adults or hardened criminals with no

idea that they might be eligible for foster care or immigration relief." 154 Cong. Rec. S10886 (daily ed. Dec. 10, 2008). The TVPRA sought to end that practice by "ensur[ing] that unaccompanied minors in temporary Federal custody are treated as children and not as criminals[]" and, "whenever possible," promoting "family reunification or other appropriate placement in the best interest of the unaccompanied alien children." *Id.* S10886-87.

33. As part of the mission to provide "safe and secure placements for children," the TVPRA requires ORR to "promptly" place unaccompanied children in "the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). In selecting that setting, ORR considers the child's "danger to self, danger to the community, and risk of flight." *Id.*

34. ORR policy implements that requirement by distinguishing between nonrestrictive placements, such as shelters and group homes, and restrictive placements, including secure facilities, heightened supervision facilities, and residential treatment centers. ORR Policy § 2.9. ORR may place a child in a "secure" facility only if it determines that the child poses a danger to himself or others or has been charged with a criminal offense. 8 U.S.C. § 1232(c)(2)(A) ("A child shall not be placed in a secure facility absent a determination that the child poses a danger to self or others or has been charged with having committed a criminal offense."). A "heightened supervision" facility, by contrast, is designed for an unaccompanied alien child who requires close supervision but does not require placement in a secure facility. *See* ORR Policy, Guide to Terms (definition of "heightened supervision"). Any restrictive placement must be supported by clear and convincing evidence. ORR Policy § 1.4.2. ORR must also assess whether the child can be stepped down to a less restrictive setting, considering factors that include the child's criminal and delinquency history. *Id.*

35. ORR may also appoint an independent Child Advocate to protect a child's best interest. The advocate gathers information from the child, parents, potential sponsors, government agencies, service providers, care-provider representatives, health professionals, and other relevant sources. ORR Policy § 2.3.4. Based on that investigation, the advocate submits a formal Best Interests Determination (BID) to ORR or the immigration court. ORR, in turn, "considers BIDs when making decisions regarding the care, placement, and release of unaccompanied alien children[.]" *Id.*

B. ORR's own regulations and policies require prompt placement of unaccompanied children and release without unnecessary delay.

1. The Foundational Rule requires prompt adjudication of sponsor applications.

36. In 2024, ORR promulgated regulations referred to as "The Foundational Rule" that codified the "policies, standards, and protections" for unaccompanied children, consistent with the TVPRA. 89 Fed. Reg. at 34385 (promulgating 45 C.F.R. § 410.1000 *et seq.*). The Foundational Rule requires "ORR [to] release a child from its custody without unnecessary delay[]" and prioritizes placement with parents and legal guardians. 45 C.F.R. § 410.1201(a). It gives that obligation a concrete deadline: absent an unexpected delay, ORR must "adjudicate the completed sponsor application of a parent or legal guardian; brother, sister, or grandparent; or other close relative who has been the child's primary caregiver within *10 calendar days of receipt* of the completed sponsor application[.]" *Id.* § 410.1205(b) (emphasis added). That deadline reflects ORR's "strong belief" that "placement with a vetted and approved family member or other vetted and approved sponsor, as opposed to placement in an ORR care provider facility . . . is in the best interests of unaccompanied children." 89 Fed. Reg. at 34439.

37. The Rule also requires supervisory review of every sponsor application that remains pending ninety days after the child enters ORR custody. 45 C.F.R. § 410.1207(a). That

review must identify and promptly resolve the reasons for the delay and determine what steps could "accelerate the unaccompanied child's safe release." *Id.* Afterward, ORR must inform the child and proposed sponsor why the release process remains incomplete and work with them and other relevant stakeholders to resolve any outstanding issues. *Id.* § 410.1207(b). ORR may continue detention only if necessary to "secure the child's timely appearance before DHS or the immigration court" or to protect the child's safety or others. *Id.* § 410.1201(a).

38. If ORR denies release based on a finding that the child poses a danger to herself or others, "the child may seek an appeal of the denial" at any time while she remains in ORR custody. 45 C.F.R. §§ 410.1205(f), 410.1206(c). Until ORR issues a final decision, however, neither the child nor her sponsor can invoke the appeal process.

2. ORR's Policy Guide reinforces the deadlines for adjudication and release.

39. ORR's Policy Guide translates the agency's statutory and regulatory obligations into procedures governing the placement, care, and release of children in ORR custody.[4] *See* ORR Policy, Introduction. Like the Foundational Rule, the Policy Guide requires ORR to adjudicate applications from Category 1 Sponsors (i.e., parents and legal guardians) within ten calendar days of receipt. *See* ORR Policy §§ 2.2.1, 2.7. It also incorporates the ninety-day review requirement to "identify and resolve the reasons that a Sponsor Application remains pending in a timely manner." *Id.* § 2.7.9.

40. The Policy Guide sets out the steps required to evaluate a proposed sponsor. Before releasing a child, ORR requires the proposed sponsor to submit supporting

[4] The UC Policy Guide was first published publicly in 2015 and is available on ORR's website. Office of Refugee Resettlement, *Unaccompanied Alien Children Bureau Policy Guide* (2025), https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide.

documentation and undergo a suitability assessment. That assessment includes verifying the sponsor's identity and relationship to the child, evaluating the proposed living environment, and conducting background and criminal-record checks, including fingerprinting. *Id.* §§ 2.2, 2.4, 2.5. ORR may also require employment or financial records, interviews with household members, and a home study. *Id.* §§ 2.2.4, 2.4.

41. Once that process is complete, the Policy Guide identifies who participates in the release process and the decisions ORR may issue. Although the case manager, case coordinator, and other stakeholders may offer recommendations, only ORR may make the final decision. *See* ORR Policy § 2.7. ORR may select from the following outcomes:

- Approve release to sponsor
- Approve release with post-release services
- Conduct a home study before a final release decision
- Deny release
- Remand for further information

Id. If ORR remands an application, the case coordinator and case manager must obtain the additional information needed for a final decision. *Id.* No other type of remand is permitted under ORR policy.

42. If ORR denies release, its policy provides avenues for review. A parent or legal guardian whose application is denied may appeal by submitting a written request within thirty business days after receiving the final decision. *Id.* § 2.7.8. The appeal may proceed with or without a hearing. *Id.* Likewise, if ORR denies release because it finds that the child poses a danger to herself or the community, the child may appeal at any time while she remains in ORR custody. *Id.*

C. ORR authority ends when a child turns eighteen, at which point the child is transferred to DHS custody.

43. ORR's authority ends when a child turns eighteen. 8 C.F.R. § 236.3(d)(3). Children who remain in ORR custody when they turn eighteen "age out" of ORR's care and, if they lack lawful immigration status, are transferred to DHS. ORR Policy § 2.8.8.2; *Garcia Ramirez v. U.S. Immig. & Cust. Enf't*, 812 F. Supp. 3d 86, 90 (D.D.C. 2025). DHS must then "consider placement in the least restrictive setting available after taking into account the alien's danger to self, danger to the community, and risk of flight." 8 U.S.C. § 1232(c)(2)(B).

STATEMENT OF FACTS

44. The protections promised by that framework bear little resemblance to what happened to BGNV. At first, he entered the United States at fifteen seeking refuge and was reunited with his mother after ORR approved her as his sponsor. But nearly two years later, after completing his sentence for a misdemeanor offense, BGNV was returned to ORR custody even though his mother remained available to care for him. Now seventeen—and mere days from turning eighteen—BGNV remains detained without explanation despite statutory and regulatory authority prohibiting such prolonged custody.

A. BGNV escapes a childhood of hardship in Honduras and seeks refuge in the United States.

45. BGNV's childhood in Tegucigalpa, Honduras, was marked by instability and hardship from the outset. His father abandoned the family when BGNV was an infant. Ex. 12 at 2. Years later, when BGNV was around thirteen years old, his mother fled domestic violence and relocated to the United States, hoping to build a safe and stable life for her family and eventually reunite with her son. Ex. 6 at 2. Until then, BGNV remained in Honduras with his grandparents who were "strict and old-fashioned." *Id.*

46. That arrangement proved abusive and exploitative. BGNV's grandparents pulled him out of school and forced him to do agricultural labor on his grandfather's land without pay, often for twelve or more hours a day in exchange for little more than food and shelter. Ex. 4 at 1; Ex. 6 at 2. [redacted] Ex. 4 at 1. [redacted] Ex. 14 at 1-2. And although BGNV's mother sent money for his support, he never received it. Ex. 4 at 1.

47. BGNV also suffered [redacted] Ex. 20 at 1-2. [redacted] Ex. 13 at 1. [redacted] Ex. 4 at 1, 6.

48. When BGNV's mother finally learned of the abuse, she and BGNV decided that he was no longer safe in Honduras. *Id.* at 1. At just fifteen years old, BGNV set out on the nearly 2,000-mile journey from Tegucigalpa to the United States. Over three weeks, he traveled by "foot, bus, and car," much of the time alongside strangers. *Id.* at 1. During the journey, police in Mexico searched him and took his money, and a fellow traveler robbed him at gunpoint. *Id.* at 2.

B. BGNV first enters ORR custody and is reunited with his mother.

49. In December 2023, BGNV reached Eagle Pass, Texas, where he entered the United States as an unaccompanied minor. ORR placed him at the Children First Residential Care shelter in Sunnyside, Texas, while it assessed whether reunification with his mother in Austin was appropriate. Ex. 1 at 1. As part of that process, ORR conducted a comprehensive review of BGNV's mother and her household, including her background, living situation, ability

to care for BGNV, and the safety and suitability of the proposed placement. ORR ultimately concluded that reunification served BGNV's best interests and, after several weeks, released him to his mother.

50. BGNV then lived with his mother and two younger brothers in a modest two-bedroom apartment in Austin. His mother worked twelve-hour days at two restaurants to support the family. Ex. 5 at 1. Despite the family's financial struggles, BGNV was finally with his mother, surrounded by family, and beginning to build the stable life they had sought for years.

C. BGNV briefly encounters the justice system.

51. BGNV's progress suffered a setback in November 2025, when he was arrested for driving his mother's car while intoxicated. Ex. 10 at 2; Ex. 11. No one was injured. BGNV then spent several months in custody while the case remained pending. He ultimately pled guilty to a misdemeanor DWI, served twenty days in Travis County Jail, and had his driver's license suspended. *See* Ex. 18 at 3; Ex. 15; Ex. 10 at 2; Ex. 11. He has since accepted responsibility, completed every sanction imposed, and has not reoffended. Ex. 5 at 2.

D. BGNV is taken by ICE and returned to ORR custody.

52. When BGNV left jail in April 2026, ICE took him into custody and transferred him back to ORR rather than allow him to return to his mother with whom he had lived for nearly two years. ORR then confined him at Compass Connections, a heightened supervision facility in San Antonio about ninety minutes from his mother. Even then, ORR did not determine that BGNV required placement in a secure facility.

53. While back in ORR custody, BGNV participated in weekly individual and group counseling focused on emotional regulation, healthy coping skills, self-awareness, communication, healthy relationships, and goal planning. He earned "Excellent" school reports and began making concrete plans for his future. Ex. 3. He told staff that he hoped to earn a high-

school diploma or GED to "make his mom proud[,]" serve in the Army, and "make good decisions to have a better future." Ex. 7 at 1; Ex. 16 at 2; Ex. 10 at 4. Shelter staff reported that he "demonstrated overall emotional stability, appropriate participation in treatment services, and continued progress toward reunification goals." Ex. 18 at 5. His progress led ORR to step BGNV down from the heightened supervision shelter to Children First Residential Care Gasmer, a lower-security shelter in Houston where he remains detained about 2.5 hours from his mother. *Id.* at 4.

54. But repeated transfers, continued detention, and separation from his family began to wear on BGNV. He told staff that he was "very frustrated" because he did not "want to be here[]" and wanted "to be with [his] family[.]" Ex. 17 at 1. BGNV has continued to express frustration as his detention and separation from his family persist.

E. ORR delays BGNV's reunification with his mother without explanation.

55. Meanwhile, BGNV's mother was trying to bring her son home. ORR had investigated and approved her as BGNV's sponsor when he first entered the United States in December 2023. Yet when BGNV returned to ORR custody in April 2026, ORR required her to repeat the sponsorship process, including another background check and a renewed assessment of her home and ability to care for him. She completed that process in July 2026. Ex. 10 at 2; ORR Policy §§ 2.5, 2.10.4. By then, only ORR's decision whether to approve reunification remained—a decision its own policy required it to make "promptly" and "without unnecessary delay." ORR Policy §§ 2.7.9, 2.10.4; 45 C.F.R. §§ 410.1201, 410.1203.

56. But over the next two months, ORR neither made a final decision nor explained why it had not done so. On July 27, 2026, BGNV's counsel asked ORR for an update on his mother's sponsorship application. Ex. 8 at 14-15. ORR did not respond. Three days later, counsel tried again. *Id.* at 14. This time, ORR said only that the case had been remanded to "ORR HQ"

and remained pending. *Id.* at 13. But ORR policy authorizes a remand only "back to the Case Manager" (not HQ) to gather additional information—something that did not happen here. ORR Policy § 2.7.5. A week later, counsel cited ORR policies requiring the prompt reunification of children improperly separated from a parent and warned that, if ORR would not follow its own guidance, BGNV would need to "evaluate other avenues for obtaining relief, such as federal litigation." Ex. 8 at 12–13. ORR again gave no substantive answer, stating only that the case "remains pending further review by ORR HQ." *Id.* at 12.

57. Nine days later, counsel warned that "ORR cannot continue to unnecessarily delay reunification without justification." *Id.* at 11. ORR eventually responded but said only that it still had no update. Counsel asked ORR to explain the delay, but ORR offered none. *Id.* at 9–10. The next day, counsel followed up yet again, explaining that ORR's "lack of transparency and unexplained stalling" strongly suggested that it was violating both its statutory duty to "place children in the least restrictive setting and its own policies and procedures." *Id.* at 7.

58. On August 21, 2026—after BGNV had spent 139 days in custody—ORR sent BGNV's counsel the agency's Danger Assessment Final Report & Recommendation, which had been submitted one month earlier. *See generally* Ex. 18.

F. An ICE official opposes reunifying BGNV with his mother despite near-unanimous support, derailing the reunification process.

59. The Danger Assessment Final Report & Recommendation reflected overwhelming professional support for reunifying BGNV with his mother, which was echoed by BGNV's appointed Child Advocate:

- **Federal Field Specialist Alexis Herebia** recommended reunification. She acknowledged BGNV's isolated behavioral issues and "history of alcohol use," but emphasized that he and his mother had actively participated in therapeutic sessions focused on reunification. Ex. 18 at 6–7. Overall, she noted that BGNV "has generally presented as calm, cooperative, [and] emotionally stable[.]" *Id.* at 6.

- **Assistant Branch Chief Antonio Gonzalez** agreed. Although he noted BGNV's prior criminal history, Gonzalez emphasized that BGNV had "demonstrated overall emotional stability" and "shown progress toward reunification." *Id.* at 7-8. "Based on the totality of the circumstances," Gonzalez recommended BGNV's release.

- **Branch Chief Jose Gonzalez** likewise agreed with the recommendation. *Id.* at 8.

- **Assistant Deputy Director for Policy Toby Biswas** also supported reunification. He noted that BGNV had "served his time and does not have any further open charges[,]" and emphasized his mother's concrete plan to supervise him. *Id.* at 8.

- **BGNV's appointed Child Advocate, the Young Center for Immigrant Children's Rights**, independently reached the same conclusion in its August 28 Best Interests Determination. It explained that reunification would "honor [BGNV's] expressed wishes," protect his rights to family integrity and development, respect his mother's commitment to his release, and comply with ORR's policy favoring prompt and safe reunification. Ex. 10 at 1. The advocate found "no safety concerns" regarding his mother's ability to care for him and concluded that he "does not pose a risk to the community or his well-being," as evidenced by his "step-down" just a few months earlier. *Id.* at 3, 5. The advocate warned that continued separation placed BGNV "at significant risk of emotional, developmental, and psychological harm." *Id.* at 4.

60. One reviewer disagreed. Respondent Dawnisha Helland, Deputy Director of ORR's Unaccompanied Alien Children Bureau, recommended against reunification. Respondent Helland appears to be or recently was serving within ICE as Acting Assistant Director of Enforcement and Removal Operations' Non-Detained Management Division. In recent federal court filings, she has identified herself as an ICE official, including in a declaration defending ICE's authority to detain families with children beyond the twenty-day limit ordinarily governing such detention. *See, e.g.*, *Flores*, Dkt. 1824 (Aug. 6, 2026).

61. Respondent Helland treated BGNV as having committed "[m]ultiple DUIs," even though the criminal court's judgment identifies his November 2025 incident as his first offense. Ex. 18 at 9; Ex. 15. Respondent Helland also referred to "criminal trespass, and evading arrest with a vehicle[,]" but ORR's own records contain no charging documents or disposition

substantiating either offense. Ex. 18 at 8; Ex. 4 at 6-7.[5] She nevertheless characterized BGNV as "a danger to the community" who showed "a blatant disregard for the law." Ex. 18 at 8. She concluded that those circumstances "weigh[ed] heavily in assessing risk in the community and the well-being of the child." *Id.* at 9.

62. Respondent Helland's lone recommendation against reunification brought the sponsorship process to a halt. ORR neither adopted the other reviewers' recommendation nor issued a final denial that BGNV could appeal or challenge in court. Instead, ORR's internal notes state that, "[a]s a result" of Respondent Helland's negative assessment, BGNV "will remain in ORR care pending further case review and release planning." Ex. 19 at 4. ORR later told counsel only that the case "remains in remand and is still pending review and decision." Ex. 2 at 4. Despite counsel's repeated requests for clarification, ORR neither issued a decision nor identified what, if anything, remained under review. BGNV's mother's completed sponsorship application has now been pending for two months.

G. BGNV turns eighteen in days and faces transfer to DHS custody, threatening his chance at reunification.

63. BGNV has spent more than 170 days in ORR custody—not counting the 25 days he spent there when he entered the United States back in 2023—and will turn eighteen on [redacted]. On his eighteenth birthday, he will become ineligible for ORR custody and its sponsorship process. Under ORR policy, he will instead be transferred to DHS custody, ending the ORR sponsorship process before he can reunify with his mother.

64. ORR still has not issued a final reunification decision and is unlikely to do so before [redacted]. Without that decision, BGNV cannot pursue an administrative appeal or obtain

[5] BGNV's counsel submitted an Authorization for Release of Records (Form A-5) to ORR and received what was represented as a complete record for BGNV.

judicial review of the agency's basis for continuing to separate him from his family. Amid that uncertainty, ORR staff reported that BGNV had expressed "worries regarding his future" and concerns "about how he would survive" if returned to Honduras. Ex. 21 at 2. He also put those concerns in his own words: "A veces pienso que voy a morir joven"—"Sometimes I think I am going to die young." *Id.*

CLAIMS FOR RELIEF

COUNT ONE:
VIOLATION OF THE TVPRA, 8 U.S.C. § 1232, AND THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(1)

65. BGNV restates and realleges all paragraphs above as if fully set forth herein.

66. The TVPRA imposes a nondiscretionary duty to place BGNV "promptly" in the least restrictive setting consistent with his best interests. 8 U.S.C. § 1232(c)(2)(A). ORR's own regulations and Policy Guide give that duty a concrete deadline. Absent an unexpected delay,[6] ORR must adjudicate a completed application from a parent or legal guardian within ten calendar days of receipt. *See* 45 C.F.R. § 410.1205(b); ORR Policy § 2.7. ORR must also conduct supervisory review of any sponsor application that remains pending ninety days after the child enters its custody. 45 C.F.R. § 410.1207(a). Through that review, ORR must "timely" identify and resolve the reasons the sponsor application remains pending. ORR Policy § 2.7.9; 45 C.F.R. § 410.1207(a).

67. ORR has failed to satisfy these requirements. It had no basis to require BGNV's mother to reapply in the first place. ORR had already fully vetted and approved her as his sponsor in 2023. Yet ORR forced her to repeat the sponsorship process—including another

[6] 45 C.F.R. § 410.1205 identifies the need for a home study as an example of an "unexpected delay." But here, the home study was already complete when BGNV's mother submitted her sponsorship application. *See* Ex. 10 at 2.

background check and home study—before it would even consider returning BGNV to her care. *Contra E.F.E.L. v. Noem*, No. 26-CV-02507, 2026 WL 1045550, at *5 (N.D. Ill. Apr. 17, 2026) ("Respondents do not cite to any authority requiring a new sponsor application every time a UAC reenters ORR custody. That's because there is absolutely nothing in the TVPRA that requires ORR to conduct the *same* evaluation a *second* time for the same sponsor.").

68. She nevertheless complied and submitted a second completed application on July 18, 2026. Yet, two months later, ORR has neither decided it nor explained the delay. The TVPRA "does not authorize ORR" to place unaccompanied children "whenever ORR gets around to it or whenever ORR wants to do so[.]" *L.V.M. v. Lloyd*, 318 F. Supp. 3d 601, 613 (S.D.N.Y. 2018).

69. That failure is also unlawful under the APA. Federal agencies must follow their own "existing valid regulations[,]" and agency action that departs from those regulations is "not in accordance with law." *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Vitarelli v. Seaton*, 359 U.S. 535, 545 (1959). ORR has disregarded that settled requirement here. By leaving the completed application unresolved, ORR has prolonged BGNV's detention well beyond the deadlines imposed by its own regulations and policies.

70. Nor does the record reveal any unexpected delay that could excuse the agency's inaction. ORR previously approved BGNV's mother as a suitable sponsor and released him to her care. His mother remains available and able to care for him, and ORR's records identify no present danger to BGNV or the community. Indeed, BGNV's appointed Child Advocate and four ORR officials who reviewed BGNV's history—including his misdemeanor—recommended release. *See generally* Ex. 18 at 6–8; Ex. 10 at 5.

71. ORR's only explanation for the application's status is that it was "remanded" to ORR HQ, but that explanation neither accounts for nor justifies the delay. ORR policy permits remand only to the case manager to obtain additional information needed for a final decision. ORR Policy § 2.7. Yet the application was sent to "ORR HQ," not the case manager. *See* Ex. 8 at 13. More fundamentally, ORR has identified no missing information or additional investigation underway. Nothing in the record suggests that the remand has advanced the application toward a decision.

72. Meanwhile, the unresolved application continues to harm BGNV. His appointed Child Advocate warned that "[o]ngoing separation places children at significant risk of emotional, developmental, and psychological harm." Ex. 10 at 4. The American Academy of Pediatrics likewise explains that prolonged family separation can cause toxic stress, disrupt a child's development, and produce lasting health consequences. *See Jacinto-Castanon de Nolasco v. U.S. Immig. and Customs Enf't*, 319 F. Supp. 3d 491, 503 (D.D.C. 2018) (finding that plaintiffs were certain to suffer irreparable injury from separation); *see also* Dep't of Health & Hum. Servs., Office of the Inspector Gen., Report No. OEI-09-18-00431, *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody* 4-5, 12-13 (Sept. 2019) (reporting concerns from ORR facilities that "longer stays resulted in higher levels of defiance, hopelessness, and frustration among children").

73. BGNV's decline bears out those warnings. At the beginning of his confinement, ORR's records describe a child engaged in school, prepared for class, active in programming, and rarely disruptive. Ex. 3; Ex. 7 at 1. Shelter staff likewise reported that he "demonstrated overall emotional stability, appropriate participation in treatment services, and continued progress toward reunification goals." Ex. 18 at 5. After more than 170 days of renewed

detention, however, his psychological condition has deteriorated. BGNV has begun to express passive suicidal ideation and feelings of hopelessness and worthlessness. *See* Ex. 21 at 1–2. He has described fear about his future, uncertainty about whether he would survive if returned to Honduras, and difficulty finding the motivation to continue living. *Id.*

74. The delay also threatens to foreclose meaningful review of ORR's basis for continuing to detain BGNV and separate him from his mother. BGNV turns eighteen on [redacted]. If he remains in ORR custody then, he will be transferred to DHS—an outcome that would not occur if ORR released him to his mother now. ORR Policy § 2.8.8.2. Neither BGNV nor his mother can appeal until ORR issues a final decision. 45 C.F.R. §§ 410.1206(a), (c). By withholding one, ORR is running out the clock on BGNV's only meaningful opportunity to challenge his continued detention before he ages out of ORR custody.

75. At bottom, ORR's refusal to decide has produced precisely the kind of delay the TVPRA forbids. It is "substantial, especially in view of the vulnerable nature of immigrant children, and is clearly antithetical to the TVPRA's mandate to promptly release UAC to the least restrictive setting." *L.V.M.*, 318 F. Supp. 3d at 620. That unexplained delay also constitutes "agency action unlawfully withheld or unreasonably delayed[]" under the APA. 5 U.S.C. § 706(1). ORR cannot evade its duty to place BGNV promptly in the least restrictive setting simply by refusing to decide his mother's application.

COUNT TWO:
VIOLATION OF THE TVPRA, 8 U.S.C. § 1232, AND THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)

76. BGNV restates and realleges all paragraphs above as if fully set forth herein.

77. The only discernible basis for withholding approval of EVV's sponsorship application is Respondent Helland's recommendation in the Danger Assessment. Ex. 19 at 4. And because ORR continues to detain BGNV without issuing a final decision, ORR's conduct

operates as a constructive denial of the application. Thus, if Respondent Helland's recommendation is arbitrary and capricious, so too is the resulting constructive denial and continued detention resting on it.

78. Under the APA, a court must "hold unlawful and set aside agency action, findings, and conclusions" that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]" 5 U.S.C. § 706(2)(A). Judicial review is available to any person "suffering legal wrong because of agency action[]" or otherwise adversely affected by it. 5 U.S.C. § 702.

79. Here, ORR's record offered no reasoned basis for rejecting reunification. Four of the five officials who assessed BGNV recommended release to his mother. Ex. 18 at 8–9. His Child Advocate independently reached the same conclusion, finding no safety concerns about his mother's ability to care for him and explaining that "reunification would support [BGNV's] stability, physical and emotional health, and overall welfare." Ex. 10 at 3–4. The Advocate also observed that BGNV's clinical team had identified no behavioral concerns indicating that he posed a risk to himself or the community. *Id.*

80. Respondent Helland alone recommended denial. Ex. 18 at 8–9. She relied on "[m]ultiple DUIs, criminal trespass, and evading arrest with a vehicle" to conclude that BGNV posed "a danger to the community" and showed "a blatant disregard for the law." *Id.* In her view, that alleged conduct reflected "repeated unlawful behavior[]" and an "apparent willingness to endanger others through reckless and evasive actions." *Id.* She also suggested that these incidents "raise[] serious questions about the safety, supervision, and judgment exercised" by his mother. *Id.* As explained below, those findings are arbitrary and capricious—they must be set aside.

81. First, Respondent Helland's assertion that BGNV committed "multiple DUIs" conflicts with his criminal record. The signed judgment in BGNV's misdemeanor case identifies the November 2025 incident as BGNV's first offense. Ex. 15 at 1. His only conviction is a single misdemeanor DWI, which injured no one and for which he completed all imposed sanctions. *Id.* An agency may not justify its decision on a ground that "runs counter to the evidence before" it. *See Univ. of Texas M.D. Anderson Cancer Ctr. v. U.S. Dep't of Health and Hum. Servs.*, 985 F.3d 472, 475 (5th Cir. 2021) (courts must reject an agency explanation that "runs counter to the evidence before the agency[]"); *Louisiana Shrimp Ass'n v. Biden*, 789 F. Supp. 3d 467, 478 (E.D. La. 2025) (agency action is arbitrary and capricious when its explanation is "contrary to the record evidence[]").

82. The only source for those additional offenses is BGNV's own unverified intake disclosures. Ex. 9 at 1. But BGNV is a minor who is unfamiliar with the U.S. legal system and does not speak English. ORR's file contains no charging records or dispositions substantiating those statements. Nor is there any indication that Respondent Helland or ORR investigated the inconsistencies in the agency's own files before relying on the disclosures. Yet Respondent Helland treated the allegations as established offenses and evidence of a "pattern of conduct," without acknowledging that they were unverified or attempting to confirm them. Ex. 18 at 8. Unverified intake disclosures cannot rationally outweigh the assessments of the professionals who evaluated BGNV, much less establish the individualized finding of present danger required by statute. *See Resolute Forest Prods., Inc. v. U.S. Dep't of Agric.*, 187 F. Supp. 3d 100, 123 (D.D.C. 2016) ("[W]here an agency has relied on incorrect or inaccurate data or has not made a reasonable effort to ensure that appropriate data was relied upon, its decision is arbitrary and capricious and should be overturned.").

83. Second, Respondent Helland's dangerousness finding cannot be reconciled with ORR's own placement decisions and clinical record. When BGNV reentered ORR custody in April 2026, ORR placed him in a heightened supervision facility—not secure custody—apparently because of his misdemeanor conviction. The record contains no contemporaneous finding that he posed a danger to others. *See* 8 U.S.C. § 1232(c)(2)(A) ("A child shall not be placed in a secure facility absent a determination that the child poses a danger to self or others or has been charged with having committed a criminal offense."). Just one month later, ORR determined that even heightened supervision was no longer warranted and transferred him to a standard shelter. Ex. 18 at 4. That decision was consistent with ORR policy, which does not classify DWI as a violent offense. *See* ORR Policy § 1.2.4.

84. The intervening record only strengthened that conclusion. BGNV has "demonstrated overall emotional stability," participated consistently in counseling, progressed toward reunification, and generally presented as "calm, cooperative, [and] emotionally stable[.]" Ex. 18 at 5–6. He also has a concrete post-release support plan. *Id.* at 5. Respondent Helland identified no new evidence to support a contrary conclusion. Her finding therefore "contradicts ORR's own record and findings," reflecting progress, stability, and support, rather than a present danger requiring continued detention. *M.S. v. Salazar*, 832 F. Supp. 3d 121, 132 (D. Conn. 2026).

85. Third, Respondent Helland's concern about EVV's ability to supervise BGNV is likewise contradicted by ORR's own clinical record. Staff reported "no concerns regarding the mother's preparedness for reunification[]" and noted that she had increased supervision and implemented additional safety measures. Ex. 18 at 7. She also demonstrated an understanding of BGNV's needs, committed to providing appropriate supervision and support, and helped develop

a structured home environment. *Id.* Mother and son reinforced that plan through therapeutic family sessions addressing supervision, household expectations, healthy boundaries, substance-use education, and safety planning. *Id.* Far from showing an unsuitable sponsor, the record shows a prepared and committed parent with a concrete plan for BGNV's return.

86. Fourth, Respondent Helland's recommendation disregards the evidence bearing on the question ORR actually had to answer: whether BGNV currently poses a danger to the community. Respondent Helland "has no expertise or experience to evaluate the propriety of the release decision made by" skilled professionals. *L.V.M.*, 318 F. Supp. 3d at 613. Nothing in Respondent Helland's assessment indicates that she interviewed BGNV, observed his behavior, consulted his treatment providers, or meaningfully considered the clinical notes documenting his progress. Instead, the assessment appears to rest entirely on his resolved misdemeanor (and unverified other offenses).

87. The record Respondent Helland overlooked directly undermines her conclusion. The DCA Assistant Branch Chief observed that "there are no active criminal charges, court supervision requirements, or pending legal matters[]" and that, "[d]uring ORR care, the child has participated in clinical, behavioral, educational, and family interventions, demonstrated overall emotional stability, and has shown progress toward reunification." Ex. 18 at 7–8. The Assistant Deputy Director similarly noted that BGNV has "served his time and does not have any further open charges[]" and emphasized that his mother has a supervision plan in place for his release. *Id.* at 8. Respondent Helland offered no reason for disregarding that evidence or treating an adjudicated misdemeanor as dispositive of present danger. Nor did she identify any unmet condition, missing information, or additional measure that could advance reunification. Her recommendation instead treated BGNV's misdemeanor as a permanent bar to release, even

though no federal law or regulation authorizes ORR to detain a child indefinitely based on a past offense. Where an agency "has failed to provide even [a] minimal level of analysis, its action is arbitrary and capricious[.]" *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016); *L.V.M.*, 318 F. Supp. 3d at 609 (agency action reaches the "zenith" of impermissibility when, as here, it reflects no reasoned "consideration of relevant law, agency documents, or the impact on" the unaccompanied child).

88. Finally, Respondent Helland treated BGNV's purported "blatant disregard for the law" as an independent basis for denying release. ORR may consider BGNV's past conduct only insofar as it bears on the statutory inquiry—whether his release would pose a present, individualized danger to himself or the community. It may not treat perceived disrespect for the law as an independent moral judgment or as a basis for further punishment. *See* 8 U.S.C. § 1232(c)(2)(A); 45 C.F.R. § 410.1205(a); ORR Policy § 2.7.4. Because Respondent Helland did not connect that characterization to evidence of present danger, her recommendation rests on a factor "which Congress has not intended [ORR] to consider[.]" *Motor Vehicle Manufacturers Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Fort Bend Cnty. v. U.S. Army Corps of Eng'rs*, 59 F.4th 180, 194 (5th Cir. 2023) ("Agency action is arbitrary and capricious if the agency relied on factors that Congress did not intend it to consider[.]").

89. Respondent Helland's recommendation substituted her personal judgment about BGNV's past conduct for the child-welfare inquiry Congress prescribed—disregarding the statutory release factors, ORR's own records, and the evidence of his present circumstances. In doing so, she blurred the line Congress deliberately drew between child welfare and immigration enforcement. And "[v]ulnerable" children such as BGNV "should not[] be held hostage to an

administration's flight of whimsy." *L.V.M.*, 318 F. Supp. 3d at 619. Nevertheless, Respondent Helland's recommendation is the only discernible basis for ORR's constructive denial of BGNV's mother's application and his resulting detention. Because it lacks record support and conflicts with the assessments of officials who relied on recent observations and data, the constructive denial and continued detention resting on it are arbitrary and capricious.

90. Respondent Helland's flawed assessment will also likely follow BGNV into adult custody. When a child ages out of ORR custody, DHS must consider the least restrictive available placement for youth who age out of ORR custody, including whether he poses a danger to the community. 8 U.S.C. § 1232(c)(2)(B). Because Respondent Helland's assessment will remain in BGNV's file, DHS will likely rely on it when deciding whether to release or continue detaining him. That prospect underscores why BGNV's turning eighteen will not moot this case and why Helland's assessment must be set aside.

COUNT THREE:
VIOLATION OF THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION
(PROCEDURAL DUE PROCESS)

91. BGNV restates and realleges all preceding paragraphs as if fully set forth herein.

92. ORR's continued detention of BGNV implicates his protected liberty interests, yet Respondents have deprived him of those interests without the "notice and opportunity to be heard 'appropriate to the nature of the case.'" *Trump v. J. G. G.*, 604 U.S. 670, 673 (2025). Respondents have done so by unreasonably delaying a final decision on his mother's sponsorship application and requiring her to prove her suitability without ever requiring ORR to justify BGNV's continued detention. That delay has denied BGNV any meaningful opportunity to challenge his confinement.

93. The Fifth Amendment prohibits the government from depriving a person of life, liberty, or property without due process of law. At a minimum, due process requires meaningful

notice and an opportunity to be heard before a neutral decision-maker, thereby guarding against the erroneous deprivation of protected interests. *Mathews v. Eldridge*, 424 U.S. 319, 333–35 (1976). These protections extend to "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

94. A procedural due process claim is analyzed under the framework established in *Mathews*. The *Mathews* test requires courts to balance three factors "[f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

A. BGNV has substantial private interests in freedom from confinement, reunification with his mother, and review by a neutral decisionmaker.

95. ORR has deprived BGNV of two substantial interests. First, BGNV has a protected liberty interest in continued freedom from government custody and placement in the least restrictive setting. The Supreme Court has repeatedly recognized that this interest lies at the core of the Fifth Amendment's Due Process Clause. *See, e.g.*, *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Fifth Amendment Due Process] Clause protects."). Indeed, the "interest in being free from physical detention by one's own government" is "the most elemental of liberty interests[.]" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

96. Courts have applied that principle to immigrant minors in government custody. *See, e.g.*, *J.E.C.M. v. Lloyd*, 352 F. Supp. 3d 559, 585 (E.D. Va. 2018) (recognizing minors'

substantial interest in freedom from ORR detention); *A.N.P.S. v. Salazar*, No. 25-cv-14778, 2025 WL 3707333, at *4 (N.D. Ill. Dec. 22, 2025) (holding that a minor had a liberty interest in freedom from detention and that the government violated that interest); *M.A. v. Molina*, No. 4:26-cv-00415, 2026 WL 741623, at *3 (N.D. Ohio Mar. 17, 2026) (holding that a minor had a private interest in freedom from detention and that ORR lacked adequate justification for continued confinement).

97. BGNV's interest is especially strong because he lived with his mother in the community for nearly two years. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (finding heightened liberty interests where plaintiffs were "taken away from their families, their schools, and their communities"). His return to ORR custody therefore inflicted a "grievous loss" warranting heightened procedural protection. *Santosky v. Kramer*, 455 U.S. 745, 758 (1982).

98. Second, BGNV also has a constitutionally protected interest in family integrity. He has an interest in being raised by his mother, and EVV has a corresponding interest in caring for her child. *See Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) ("[T]he relationship between parent and child is constitutionally protected."); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (citation modified) ("The rights to conceive and to raise one's children have been deemed essential, basic civil rights of man, and rights far more precious than property rights."). Courts have recognized those same interests when the government detains immigrant children and separates them from their parents. *See, e.g., C.M. v. United States*, 672 F. Supp. 3d 288, 345 (W.D. Tex. 2023) (holding that plaintiffs plausibly alleged a Fifth Amendment violation when the government separated a parent and child without adequate procedural safeguards); *I.R.L.M. v. Salazar*, No. 5:26-cv-04335-DTB, 2026 WL 2597933, at *8 (C.D. Cal. Sep. 2, 2026) (holding

that a noncitizen minor had cognizable private interest in family unity); *E.H.C.F.*, 2026 WL 145229 (concluding that a minor was likely to succeed on his claim that his continued detention and separation from his mother violated due process); *Souza v. Sessions*, No. 18 CV 4412, 2018 WL 10436697, *1 (N.D. Ill. June 28, 2018) (recognizing that the Due Process Clause protects familial liberty interests and that "additional process only serves to interfere in the family's integrity with little to no benefit to the government's interests[]"); *J.E.C.M.*, 352 F. Supp. 3d at 585 (recognizing "constitutionally protected interest in family unity[]" and holding that minors in ORR custody and their proposed sponsors plausibly alleged that ORR's release policies violated procedural due process); *J.S.R. v. Sessions*, 330 F. Supp. 3d 731, 741 (D. Conn. 2018) (observing that forcibly separating minors from their parents without due process violated their constitutional rights).

99. ORR has directly burdened both interests. It continues to confine BGNV and separate him from his mother. Respondents claim that the vetting process is ongoing yet offer no adequate justification for BGNV's continued detention. This constitutes a constructive denial of EVV's sponsorship application and has left BGNV indefinitely confined and separated from his mother in the name of further review—even though ORR previously completed that review, found his mother suitable, and released him to her care.

100. The first *Mathews* factor therefore weighs in BGNV's favor.

B. ORR's opaque and incomplete procedures create an intolerable risk of erroneous deprivation.

101. Respondents have deprived BGNV of constitutionally protected liberty interests by keeping him in ORR custody, continuing to separate him from his mother, constructively denying her sponsorship application, and failing to issue a final decision on his release to the least restrictive appropriate placement.

102. The delay in adjudicating his release is unjustified. BGNV's mother promptly completed all requirements for her sponsorship application—her second application in fewer than three years. She submitted the completed application on July 18, 2026. ORR has already conducted a Danger Assessment, which included release recommendations by the Division of Case Administration (DCA) Federal Field Specialist, DCA Assistant Branch Chief, the DCA Branch Chief, and the Assistant Deputy Director. Yet, ORR has still not issued a final release decision. ORR's explanation for the delay has been opaque. Over a four-week period, BGNV's counsel asked ORR for the application's status more than ten times without receiving a definitive answer. *See* Exs. 2, 8.

103. ORR's only explanation is that the matter remains on remand, but, as explained above, it has not identified any missing information, explained why further fact-finding is necessary, or shown that anyone is actually gathering additional facts. Respondents have not identified any remaining process or determination necessary to decide whether EVV is a suitable sponsor under the TVPRA. Respondents already possess her sponsorship application, fingerprint results, and home study recommending BGNV's placement with his mother. Ex. 10 at 2. ORR has raised no concerns about EVV as a sponsor, and she qualifies as a Category 1 sponsor under ORR guidelines. ORR's own records also confirm that EVV poses no risk of harm, abuse, maltreatment, exploitation, or trafficking to BGNV. ORR's comprehensive home study vetted EVV and her household and affirmatively recommended reunification.

104. BGNV and his mother have no meaningful avenue for review until ORR issues a final decision. Without one, there is nothing to appeal. An "opaque procedure" under which case managers "are under no obligation to issue formal denials" deprives BGNV "of any opportunity to contest ORR's findings, and thus any meaningful opportunity to alter its conclusions."

J.E.C.M., 352 F. Supp. 3d at 586 (finding a plausible procedural due process claim). That concern is especially acute here. If ORR's basis for withholding reunification is a finding that BGNV poses a danger to himself or the community, ORR's regulations expressly entitle him to appeal that determination. 45 C.F.R. § 410.1205(f). Yet by refusing either to approve or deny release, ORR has deprived BGNV of that appellate right while continuing to detain him and separate him from his mother. Without judicial intervention, BGNV is likely to turn eighteen and be transferred to DHS custody before he receives any hearing or meaningful opportunity to challenge his continued confinement.

105. Prolonged delay can itself deprive a child and parent of their protected interests—even before ORR formally denies reunification. *M.A.*, 2026 WL 741623, at *6 (following the reasoning of other courts that significant and unexplained delays in responding to a proposed sponsor's unification request violate due process); *Maldonado*, 2018 WL 2089348, at *1 (finding a procedural due process violation where ORR's delay separated a child from his mother for eleven months); *Stanley*, 405 U.S. at 647 ("if there is delay between the doing and the undoing petitioner suffers from the deprivation of his children, and the children suffer from uncertainty and dislocation"). The same principle applies here. Despite BGNV's mother having taken the necessary steps to become his sponsor and multiple ORR officials recommending release, ORR has neither released him nor issued a final decision.

106. Although ORR's delay here is shorter than the delays in some similar cases, its consequences are no less urgent. BGNV turns eighteen on [redacted], and if ORR continues to withhold a final decision until then, its inaction will effectively transform unresolved child ORR custody into adult DHS detention before BGNV receives a hearing or any meaningful opportunity to challenge his continued confinement. *See* ORR Policy § 2.8.8.2. That

transfer would compound the loss he is already enduring by prolonging both his confinement and his separation from his mother.

107. Pursuant to procedural due process, BGNV is entitled to challenge his prolonged detention by ORR and to be heard by a neutral decisionmaker. *See Valley v. Rapides Par. Sch. Bd.*, 118 F.3d 1047, 1052 (5th Cir. 1997) ("The basic requirement of constitutional due process is a fair and impartial tribunal, whether at the hands of a court, an administrative agency or a government hearing officer."). A neutral decisionmaker is not an ICE official. The recommendation of an ICE official to keep BGNV in custody is the basis for the constructive denial of EVV's sponsorship application. Ex. 19 at 4 ("The UAC Deputy Director issued a negative recommendation against releasing the child to his sponsor. As a result, the child will remain in ORR care pending further case review and release planning.").

108. The second *Mathews* factor thus weighs decisively in BGNV's favor.

C. The government has no legitimate interest in BGNV's continued detention.

109. The government has no interest sufficient to justify the continued deprivation of BGNV's constitutionally protected liberty interests. ORR confirmed in 2023 that EVV is BGNV's mother and that she is available and suitable to care for him. Nothing in the current record supports a different conclusion. ORR's own Danger Assessment likewise identifies no present danger to BGNV or from his release. Ex. 18.

110. A resolved misdemeanor does not give ORR license to detain a child indefinitely, nor does federal law or ORR policy permit continued custody based on past conduct absent a current safety risk. With no identified safety concern, no unresolved factual issue, and no concrete step needed to protect BGNV or the community, ORR's continued detention serves no governmental interest.

111. ORR is obligated to place BGNV in the least restrictive setting consistent with his best interests, and ORR policy likewise favors placement with a parent. Thus, the government's interest, as defined by statute and agency policy, aligns with BGNV's interest in release to his mother. ORR's unexplained delay does not advance its statutory child-welfare interest. Instead, it suggests that ORR is pursuing a different—and impermissible—objective: detaining children based on their lack of lawful immigration status. *See Saravia*, 280 F. Supp. 3d at 1176 ("Once a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings."). Congress assigned ORR a child-welfare role, not an immigration-enforcement function. The government's interest in ensuring the safety of BGNV is "de minimis" if his mother is shown to be a fit parent. *See Stanley*, 405 U.S. at 657–58; *Santosky*, 455 U.S. at 760 ("[U]ntil the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship.").

112. Nor would releasing BGNV to his mother impose any identified fiscal or administrative burden. Quite the opposite: "detention itself imposes significant costs and burdens" on the government. *Ruiz v. Warden, Montgomery Processing Ctr.*, No. 4:26-1307, 2026 WL 1707199, at *5 n.6 (S.D. Tex. June 12, 2026); *Rodriguez v. Frink*, 823 F. Supp. 3d 678, 690 (S.D. Tex. 2026). And when a court is "'[f]aced with such a conflict between the government's unspecific financial and administrative concerns on the one hand, and the risk of substantial constitutional harm to [the individual] on the other,'" it has "'little difficulty concluding 'that the balance of hardships tips decidedly' in [his] favor.'" *Mahdawi v. Trump*, 136 F.4th 443, 455 (2d Cir. 2025). The third *Mathews* factor therefore also supports BGNV.

113. Taken together, the *Mathews* factors establish that ORR's continued detention of BGNV—and its failure to provide a timely, meaningful process for securing his release—

violates due process. ORR must immediately issue a final decision on EVV's sponsorship application. If ORR denies that application, BGNV must be allowed to appeal before any transfer to DHS custody and be heard by a neutral decisionmaker.

COUNT FOUR:
VIOLATION OF THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION (SUBSTANTIVE DUE PROCESS)

114. BGNV incorporates by reference the allegations of fact set forth in the preceding paragraphs.

115. ORR's unauthorized custody of BGNV and continued detention, which rests on an arbitrary finding that he poses a danger to the community, violate his substantive due process rights.

116. Substantive due process bars "certain government actions regardless of the fairness of the procedures used to implement them." *Daniels v. Williams*, 474 U.S. 327, 331 (1986). Prolonged separation of a child from his parent, absent any showing that the parent is unfit or poses a danger to the child, is one such action. *See, e.g.*, *Quilloin*, 434 U.S. at 255 ("[T]he Due Process Clause would be offended '[i]f a State were to attempt to force the breakup of a natural family[] . . . without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest.'"); *United States v. Loy*, 237 F.3d 251, 269–70 (3d Cir. 2001) ("[W]here there is insufficient evidence to support a finding that children are potentially in danger from their parents, the state's interest cannot be said to be 'compelling,' and thus interference in the family relationship is unconstitutional."); *Ms. L* v. *ICE*, 310 F. Supp. 3d 1133 (S.D. Cal. 2018) (holding that the government's practice of separating asylum-seekers from their minor children at the border and failing to reunify them, without any showing that parents were unfit or presented danger to their children, likely violated substantive due process).

117. As explained above, BGNV has a protected interest in freedom from physical restraint when a safe and available home with his mother awaits him. *See supra* Count Three. The fundamental liberty interests in freedom from imprisonment and family integrity are deeply rooted in the Nation's history and tradition. *See Zadvydas*, 533 U.S. at 690 (noting that "[f]reedom from imprisonment... lies at the heart of the liberty that [the Due Process] Clause protects."); *In re Gault*, 387 U.S. 1, 13 (1967) (recognizing that a child's interest in freedom from confinement is no narrower than an adult); *Santosky*, 455 U.S. at 753 (recognizing a parent's care and custody of a child as a "fundamental liberty interest"); *Troxel v. Granville*, 530 U.S. 57, 65–66 (2000) (plurality op.) ("[T]he interest of parents in the care, custody, and control of their children [] is perhaps the oldest of the fundamental liberty interests recognized by this Court."). These rights "extend[] to citizens and non-citizens alike[.]" *Leticia v. United States*, No. 22-CV-7527 (NGG) (RJL), 2023 WL 7110953, at *13 (E.D.N.Y. Oct. 27, 2023).

118. ORR has infringed BGNV's fundamental liberty interests. BGNV is a child whose mother is present in the United States, and he has a protected interest in being raised by her rather than remaining in government custody. His mother is willing and able to care for him; ORR previously vetted and approved her as his sponsor, and she has again completed all sponsorship requirements. No one has found that EVV is unfit or poses a danger to BGNV. *See E.H.C.F.*, 2026 WL 145229, at *10 ("Courts have repeatedly held that it is a violation of substantive due process under the Fifth Amendment to separate children from parents absent a clear showing that the parent is unfit or is otherwise endangering the child."). BGNV's continued detention and separation from his mother thus infringe his fundamental liberty interests in bodily liberty and family integrity.

119. No narrowly tailored, compelling governmental interest justifies that infringement of BGNV's interests in freedom from imprisonment and family integrity. ORR's statutory duty would require it to place him in the least restrictive setting consistent with his best interests—which, here, is with his mother. Nor does his release present any credible threat to the community. ORR's own Danger Assessment Final Review and Recommendation identifies no present danger to BGNV or the community, and four of the five officials who assessed him recommended release. Ex. 18. BGNV has also participated in counseling services, and no clinician has identified any risk to BGNV or the community. Ex. 10 at 5. Because ORR's own record identifies no present danger to BGNV or the community, his continued confinement can serve only impermissible ends: punishing him again for resolved conduct or deterring him from pursuing protection in the United States. Neither is a valid—much less compelling—government interest. *See Leticia*, 2023 WL 7110953, at *14.

120. Accordingly, no compelling governmental interest justifies ORR's continued infringement of BGNV's fundamental interests in bodily liberty and family integrity.

PRAYER FOR RELIEF

Based on the foregoing, BGNV respectfully requests that the Court grant the following relief:

a. Declare that Respondents have violated BGNV's constitutional and statutory rights and failed to comply with their own regulations and policies;

b. Grant BGNV's Petition for a Writ of Habeas Corpus and order Respondents to immediately release BGNV to the custody and care of EVV or, at a minimum, (1) promptly issue a final decision on EVV's sponsorship application, (2) provide him with a prompt hearing before a neutral decisionmaker to challenge any adverse decision regarding his release, and (3) enjoin any transfer to DHS or ICE until BGNV

has exhausted the administrative appeal process and obtained judicial review of that decision;

c. Grant a temporary restraining order and preliminary injunction ordering Respondents to release BGNV pending final resolution of this action, or, at a minimum, enjoining Respondents from transferring him to DHS or ICE while this action remains pending;

d. Declare that ORR's constructive denial of EVV's sponsorship application and continued detention of BGNV are arbitrary and capricious;

e. Declare that Respondent Helland's dangerousness finding is arbitrary and capricious, and thus that any determination by ORR, DHS, or ICE infected by that finding is also arbitrary and capricious;

f. Award BGNV his costs and reasonable attorneys' fees under the Equal Access to Justice Act or any other applicable statute or regulation; and

g. Award such other relief as the Court deems just and proper.

Dated: September 25, 2026

Respectfully submitted,

By: /s/ Alexa L. Sendukas
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, BGNV, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Emergency Petition for a Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: September 25, 2026

Respectfully submitted,

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