

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

C.M.C., a minor,	§	
	§	
Petitioner	§	
	§	CIVIL NO. 4:25-CV-05389
v.	§	
	§	
Brett Bradford, in his official capacity as Field Office Director of ICE Enforcement and Removal Operations Houston Field Office;	§	
	§	
KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security;	§	
	§	
PAM BONDI, in her official capacity as Attorney General of the United States,	§	
	§	
Respondents.	§	
	§	

**PETITIONER’S RESPONSE TO RESPONDENT’S MOTION TO DISMISS AND IN
THE ALTERNATIVE FOR SUMMARY JUDGMENT**

Petitioner, through undersigned counsel, files this Response and asks the Court to deny Respondents’ Motion to Dismiss or for Summary Judgment.

**I. The Government’s Entire Motion Rests on a Factual Assertion That Is Flatly
Contradicted by the Record**

Respondents argue that the habeas petition must be dismissed because Petitioner is “not in the custody of the Respondents” and is “in the custody of ORR.”

That statement is demonstrably false based on their own sworn declaration.

Officer Frausto swears:

- Petitioner was taken into ICE custody on October 1, 2025.

- Petitioner was transported by ICE to detention for “processing and placement.”
- ICE determined the removal order was final and effectuated detention based on that order.

The declaration then claims ORR “has sole custody” only after ICE unilaterally placed Petitioner there.

ICE cannot detain a minor, transfer him to ORR, and then defeat habeas jurisdiction by pointing to the transfer. The Supreme Court has already rejected that tactic.

II. Supreme Court Precedent Controls and Defeats the Government’s Jurisdiction Argument

Habeas jurisdiction turns on whether the Government exercises significant restraint on liberty, not where a detainee sleeps. The case law is brutally clear:

- *Rumsfeld v. Padilla*, 542 U.S. 426 (2004) — habeas is proper where federal officials exercise custody or control over detention.
- *Zadvydas v. Davis*, 533 U.S. 678 (2001) — habeas relief lies where immigration detention becomes prolonged and removal is not reasonably foreseeable.
- *Clark v. Martinez*, 543 U.S. 371 (2005) — §241 detention applies identically to inadmissible and deportable noncitizens; the Government cannot stretch the statute to permit indefinite detention.

The entity physically holding the minor does not matter if ICE is the reason the minor is being detained. Here, the Government admits ICE:

- arrested him based on the final order,
- processed him,
- caused his detention, and
- is actively pursuing removal.

Under any interpretation, those actions unquestionably amount to “custody” under Padilla.

III. Fifth Circuit Law Confirms Habeas Jurisdiction

The Fifth Circuit repeatedly holds that habeas jurisdiction exists whenever federal officials exercise authority that restrains liberty, even through another agency or contractor.

The Fifth Circuit has also made clear that courts must look past form to substance when the Government tries to defeat judicial review by shifting physical custody.

Once ICE detention triggered the removal period, and ICE continued immigration detention by placing the child in ORR confinement, habeas review lies against ICE.

IV. The Government’s ORR Argument is Self-Defeating

The Government hopes the Court will conclude:

1. ICE can detain a minor under §241,
2. transfer him to ORR,
3. and thereby insulate itself from judicial review.

That would create a loophole that swallows *Zadvydas* and *Clark*. ICE could warehouse any minor indefinitely simply by transferring custody to ORR.

Supreme Court immigration-detention jurisprudence has repeatedly rejected Government interpretations that erase judicial oversight. Clark calls it “a classic illustration of the danger of the Government’s argument.”

V. The Government has NOT moved to dismiss the TRO — because they cannot defend the detention on the merits

Respondents avoid the merits entirely because they cannot dispute:

- removal is not reasonably foreseeable;
- he is a minor;

- he has no criminal record; and
- less restrictive alternatives exist.

Under *Zadvydas* and *Clark*, continued detention is unlawful when removal is not reasonably foreseeable. Under *Reno v. Flores*, 507 U.S. 292 (1993), children must be placed in the least restrictive setting pending immigration outcomes.

This situation meets both standards.

VI. Summary Judgment in favor of the Respondents is Premature and Improper

Even assuming jurisdiction were disputed, which it is not, summary judgment cannot be granted without establishing that:

- ICE is no longer exercising control over Petitioner's detention, and
- ORR would release him but for ICE.

The Government submitted no evidence supporting either proposition. Their own declaration confirms ICE control over the pendency of removal.

If the Court accepted the Government's theory, every minor in America could be detained indefinitely so long as ICE handed them to ORR before a TRO hearing. That is not the law under *Padilla*, *Zadvydas*, *Clark*, *Flores*, or Fifth Circuit precedent. It would convert a shelter system into a loophole for indefinite detention of children. Congress did not authorize it, and the Constitution does not tolerate it.

VII. Relief Requested

Petitioner asks the Court to:

1. Deny Respondents' Motion to Dismiss and Motion for Summary Judgment.
2. Find that ICE exercises custody and control over Petitioner for purposes of 28 U.S.C. §2241.
3. Proceed to rule on the TRO and preliminary-injunction request on the merits.

Respectfully submitted,

/s/ Matthew Mendez

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Attorney for Petitioner

CERTIFICATE OF SERVICE

On December 2, 2025, Counsel for Plaintiff served a copy of the attached Petition via email, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the Respondent, Pam Bondi, in her Official Capacity as Attorney General of the United States, at USATXS.CivilNotice@usdoj.gov.

/s/ Matthew Mendez

Matthew Mendez
Attorney for Petitioner

12/22/2025

Date