

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

A.N.P.S, minor, by and through Next
Friend of Kin, N.C.S.E.

Petitioner,

v.

Angie SALAZAR, in her official capacity
as Acting Director of the Office of
Refugee Resettlement (ORR), Andrew
GRADISON, in his official capacity as
Acting Assistant Secretary for the
Administration for Children and Families
(ACF), Robert F. KENNEDY JR., in his
official capacity as Secretary of the
Department of Health and Human
Services (HHS), Luis CASTRO, in his
official capacity as Federal Field
Specialist, Office of Refugee
Resettlement, Antonio GONZALEZ, in
his official capacity as the Federal Field
Specialist Supervisor, Office of Refugee
Resettlement, LaVerne MUIR WRAY in
her official capacity as Director of
Heartland Int. Children's RC

Case No. 25-cv-14778

Judge Hon. Rowland

Respondents.

PETITIONER'S RESPONSE TO RESPONDENTS' MOTION TO RECONSIDER

Respondents seek to vacate the Opinion granting Petitioner's Writ of Habeas Corpus by this Court on the sole basis that Petitioner's legal guardian, N.C.S.E., is not the same cousin that Petitioner was released to in 2023 from ORR custody. However, the identity of Petitioner's sponsor is not a material fact to the Court opinion nor was it relied upon by this Court in finding

that Respondents' violated Petitioner's due process rights when they re-detained him. While the Court's Opinion did, in error, identify N.C.S.E. as being the original 2023 ORR approved sponsor, the identity of Petitioner's sponsor is not relevant to determining Respondents' violation of Petitioner's due process rights. While this Court did somewhat rely on the error in determining that Petitioner had exhausted administrative remedies, exhaustion is not required to grant the Writ of Habeas Corpus. Therefore, the clarification that N.C.S.E. is not the 2023 sponsor does not command a different result by this Court. Respondents' Motion to Reconsider should be denied.

I. The Court Did Not Err in Concluding that Petitioner Was (And Continues to Be) an Unaccompanied Child (UAC)

Petitioner does not dispute that at the time of his re-detainment, he was a UAC and maintains the protection afforded to UACs under the TVPRA and INA. For the reasons stated in the Petition for Writ of Habeas Corpus and herein, Petitioner maintains that he was not a *detainable* UAC at the time he was re-detained by Respondents.

II. The Court Correctly Concluded that Petitioner's Re-Detention Violated Due Process

The Court did not rely upon the identity of N.C.S.E. in concluding that Respondents' violated Petitioner's due process. As this Court properly noted, "the question is whether the government violated Petitioner's procedural due process rights when they re-arrested and detained Petitioner after previously releasing him *pursuant to the requirements* of the HSA and TVPRA". *See*, Memorandum Opinion and Order ("Opinion"), ECF No. 20, at 9. Pursuant to those requirements, Petitioner could only be released to a sponsor after ORR determined that Petitioner was neither a flight risk or a danger to himself or the community. As this Court correctly held, Petitioner's due process rights were violated because there was no change in those circumstances that would

allow for his re-detention. The identity of the sponsor to whom Petitioner was released was not material to that analysis.

HHS published the Foundational Rule which sets standards for, among other things, the release of UACs from ORR custody to sponsors (45 C.F.R. §410.1200-1210). The Foundational Rule recognizes and incorporates the *Flores* Settlement Agreement including “establishing a general policy favoring release of unaccompanied minor children where it is determined that detention of the unaccompanied child is not required either to secure the child’s timely appearance for immigration proceedings or to ensure the unaccompanied child’s safety or that of others.” Foundational Rule at ¶¶ 12A, 14. Furthermore, 45 C.F.R. § 410.1201 also provides that, “when ORR determines that the 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, ORR shall release a child from its custody without unnecessary delay...”

In granting the Writ of Habeas Corpus, this Court held that “Petitioner has a liberty interest in freedom from detention, and [] the government violated that interest when it re-detained Petitioner without a change in circumstances.” Opinion, ECF No. 20, at 10. It is undisputed that in December 2023, ORR released Petitioner to a sponsor – thereby finding that his detention was not required to secure his appearance for immigration proceedings or ensure his safety or the safety of others. These circumstances have not changed, nor do Respondents allege that they have changed.

Respondent’s claim that the “changed circumstance” for Petitioner is that ORR cannot release “A.N.P.S. to someone who refuses to even fill out a sponsorship application with ORR...”. Resp. Motion to Reconsider, ECF #26 at 3. That is nonsensical. This “changed

circumstance” did not exist at the time of Petitioner’s re-arrest and re-detention and thus could not have been the basis for Respondent’s actions at that time.

As this Court correctly held, Petitioner’s flight risk and danger to the community is the only relevant basis for determining whether there was a change of circumstances warranting his re-detention. Opinion, ECF No. 20, at 12. If the Court were to replace the word “N.C.S.E.” with “a sponsor” in the due process analysis, neither the legal basis nor the Court’s conclusion would change. Therefore, the identity of Petitioner’s original sponsor is not the basis for this Court’s opinion. Respondent’s Motion to Reconsider should be denied.

III. Exhaustion of Administrative Remedies

Within the discussion of exhaustion of administrative remedies in the Court’s opinion, it is true that the Court mistakenly stated that the sponsor to whom ORR initially released Petitioner was N.C.S.E. The correction of this error, however, does not command a different result.

It is well established that there is no statutory requirement for exhaustion of remedies within 28 U.S.C. § 2241. Furthermore, district courts have jurisdiction to grant writs of habeas corpus to petitioners who are held in the custody of the federal government in violation of the constitution, laws, or treaties of the United States. 28 U.S.C. § 2241. The “court shall summarily hear and determine the facts and dispose of the matter as law and justice require.” 28 U.S.C. § 2243. “Federal courts have ‘broad discretion in conditioning a judgment granting habeas relief’.” *Beltran v. Cardall*, 222 F. Supp. 3d 476 (E.D. Va. 2016) (ordering RMB to be released from ORR to Petitioner’s care and custody), citing *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987). Challenging ORR’s detention of UACs is “properly within the scope of [the] habeas corpus proceeding.” *D.B. v. Cardall*, 836 F.3d 721, 731 (4th Cir. 2016). Therefore, no exhaustion of

administrative remedies is required, and the erroneous factual conclusion was not a basis for this Court's decision.

IV. Respondents' Position Is Unworkable

Respondents ask this Court to set a precedent that allows Respondents to re-detain UACs without any change in circumstance to their flight risk or danger. Respondents' position, that Petitioner can be re-detained solely because he lives with a caregiver other than his original sponsor in 2023, would have a chilling effect on so many other UACs. A child released to their father who later lives with their mother would be subject to re-detention. A child released to their aunt whose mother later arrives in the U.S. and retakes custody would be subject to re-detention. A child who is released to their cousin, who later lives with a court appointed legal guardian, would be subject to re-detention. As this Court correctly noted during the February 11, 2026 hearing, previously approved sponsors shouldn't have to go through the vetting process simply because Respondents say so. In the same way, a child such as Petitioner shouldn't be re-detained simply because Respondents say so. Respondents Motion to Reconsider should be denied.

Dated: April 1, 2026

Respectfully submitted,

/s/ Laura Smith
Attorney for Petitioner

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