

**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 FOR VACATUR UNDER RULE 60(b)**

Respondents seek vacatur of the December 22, 2025, Order granting the Petition for Writ of Habeas Corpus based on a mistake of fact which they now allege to be a misrepresentation. Respondents first raised the mistake of fact in their Motion to Reconsider on February 3, 2026. After a full briefing and two in-person hearings before this Court on Respondents' Motion to

Reconsider, the Court established that there was a mistake of fact, namely that portions of this Court's opinion concluded that N.C.S.E. was Petitioner's ORR approved sponsor based on the ORR Verification of Release. The Court further determined that the mistake of fact was caused by Respondents' redaction of the Verification of Release. Now, almost 4 months later, Respondents have abruptly changed their strategy and accuse Petitioner's counsel of "fraud, *misrepresentation*, or other misconduct by an adverse party". Dkt. 35 at 3.

Plaintiff's counsel takes this false accusation very seriously. On or about February 2023, Children's Legal Center initiated representation of A.N.P.S. with respect to his immigration proceedings. On May 3, 2023, counsel requested A.N.P.S.'s records from ORR. *See* Exhibit A. On May 16, 2023, ORR electronically provided A.N.P.S.'s records which included a redacted Verification of Release. *See* Exhibit B.

On May 5, 2026, the Court indicated a desire to vacate the December 22, 2025, opinion based on the mistake of fact. Petitioner acknowledges that some of the Court's reasoning was based on this mistake of fact and that the Court's desire to vacate those portions of the opinion is appropriate. However, the entire opinion need not be vacated to remedy the mistake of fact. Ultimately, Respondents admitted to this Court at the February 11, 2026, hearing that they are unhappy with the precedent this matter establishes, namely that Respondents cannot remove children throughout the United States from the care of their families and re-detain them. Respondents Motion for Vacatur should be denied because there was no misrepresentation, the Court's due process analysis did not rely on the factual mistake, and Vacatur under Rule 60(b) is not appropriate.

I. Neither Petitioner or Petitioner's Counsel Has Committed a Rule 60(b) Misrepresentation

Respondents allege that vacatur is necessary because of “fraud, *misrepresentation*, or other misconduct by an adverse party”. Dkt. 35 at 3. Specifically, Respondents allege that Petitioner or Petitioner’s counsel misrepresented that N.C.S.E. was the sponsor named in the ORR Verification of Release. In support of the false allegation, Respondents cite to Dkt. 20 at 8, “that N.C.S.E. was Petitioner’s *sponsor* as approved by ORR at the time of his arrest”. However, this citation is to the Court’s opinion, not any misrepresentation by Petitioner or counsel. Petitioner never alleged that N.C.S.E. was the ORR approved sponsor. Petitioner brought this action challenging a violation of his due process rights based on his re-arrest and detention without any changed circumstances as to his flight risk or danger. The only fact relevant to Petitioner’s due process claims is that Petitioner was previously released by ORR, thus determining that he was not a danger or a flight risk. As to this material fact, that Petitioner was previously released by ORR, there has been no mistake.

Furthermore, any mistake of fact as to the identity of Petitioner’s approved ORR sponsor is the fault of Respondents. Respondents, not Petitioner, fully redacted the identity of the approved sponsor. *See* ORR Verification of Release filed concurrently under seal. As the Court will notice upon examination, the Name of Sponsor, Aliases (if any), Address, City, State, Zip Code, and Telephone # of the sponsor are redacted by Respondents. The only identifying information Respondents did not redact is the Relationship to Child, “Adult First Cousin (Non-Primary Caregiver)”. For reasons unknown to Petitioner’s counsel, Respondents redacted the identity of the sponsor in the ORR Verification of Release. Therefore, any mistake as to the identity of the individual named in the ORR Verification of Release is the fault of Respondents.

II. Section III of the Court’s Opinion Correctly Concluded that Petitioner’s Re-Detention Violated Due Process and That Analysis Did Not Rely On the Mistake of Fact

The Court did not rely upon the identity of N.C.S.E. in concluding that Respondents' violated Petitioner's due process rights under the *Mathews* test. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). 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". Dkt. 20 at 9. The relevant fact is that Petitioner was previously released from ORR custody and there is no change in circumstances regarding his flight risk or danger. The undisputed fact that Petitioner was previously released from ORR *to a sponsor*, is the basis for this Court's opinion.

Specifically, as this Court correctly held, Petitioner's due process rights were violated because there was no change in circumstances that would allow for his re-detention. 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." Dkt. 20 at 10. It is undisputed that

Petitioner's danger and flight risk circumstances have not changed. As this Court correctly based its opinion, Petitioner's flight risk and danger to the community is the relevant fact for determining whether there was a change of circumstances warranting his re-detention. *Id.* Importantly, if the Court were to remove the single instance of "N.C.S.E." from the Section III and replace it with "a sponsor", neither the legal basis nor the Court's conclusion would change. Therefore, Section III of the Court's opinion was not based on any mistake of fact and Respondents' Motion for Vacatur should be denied.

III. Vacatur Under Rule 60(b) is Not Appropriate.

To set aside a judgment under FRP 60(b), the judgment must be one that could not have been used to obtain a reversal on direct appeal. *See Bell v. Eastman Kodak Co.*, 214 F.3d 798, 801 (7th Cir. 2000). ("A collateral attack on a final judgment," such as a Rule 60(b) motion, "is not a permissible substitute... for appealing the judgment of a federal district court."). In *Bell*, Plaintiff sought Rule 60(b) vacatur with the only basis being plaintiff's belief that the Magistrate Judge "had overlooked or misinterpreted key evidence." *Id.* at 800. In discussing Rule 60(b), the *Bell* court established that "the ground for setting aside a judgment under Rule 60(b) must be something that could not have been used to obtain a reversal by means of a direct appeal. For example, the judgment might be void because the defendant had never been made aware of it and so had no opportunity to challenge it by means of a direct appeal." *Id.* at 801. "Or the judgment might have been obtained by a fraud that the losing party could not have discovered in time to have it rectified by the court of appeals on direct appeal. *Id.* While the Court did not give every instance of when a Rule 60(b) vacatur would be appropriate, the court held that a Rule 60(b) vacatur must be based on "grounds that could not, in the circumstances, have been presented in a direct appeal." *Id.*

Rule 60(b) “is not an alternate route to correct simple legal errors; instead, it is an extraordinary remedy for specific circumstances.” *Cash v. Ill. Div. of Mental Health*, 209 F.3d 695, 698 (7th Cir. 2000) citing *Russell v. Delco Remy Div. of General Motors Corp.*, 51 F.3d 746, 749 (7th Cir. 1995). Rule 60(b) vacatur is not appropriate here. This court’s opinion finding that Petitioner’s due process rights were violated when Respondents re-detained him without a change in circumstances can be appealed. Accordingly, Respondents’ motion should be denied.

Conclusion

Respondents are unhappy with this Court’s opinion and seek vacatur so as to eliminate the precedent. To achieve their goal, Respondents make a false allegation that Petitioner committed misrepresentation. Rule 60(b) vacatur is not appropriate here because no misrepresentation was committed by Petitioner, the mistake of fact was not a basis for this Court’s due process analysis and Respondents can take up their disagreement on appeal. Accordingly, the Motion for Vacatur Under Rule 60(b) should be denied.

Dated: June 5, 2026

Respectfully submitted,

/s/ Laura Smith
Attorney for Petitioner

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