

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

E.H.C.F., a minor, by and through his Next Friend,
M 

Petitioners/Plaintiffs,

Civil Case No.: 3:25-cv-02142 (VDO)

v.

Robert F. KENNEDY, JR. in his official capacity
as Secretary of Health and Human Services; Angie
SALAZAR, in her official capacity as Acting
Director of the Office for Refugee Resettlement;
Kristi NOEM in her official capacity as Secretary
of Homeland Security; Regina MOLLER, Director
of Noank Community Support Services; U.S.
Department of Health and Human Services (HHS);
U.S. Office of Refugee Resettlement (ORR); U.S.
Department of Homeland Security (DHS); Noank
Community Support Services (NCSS)

Respondents/Defendants.

**PETITIONER-PLAINTIFF'S REPLY IN SUPPORT OF EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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INTRODUCTION

The ongoing detention and separation of the minor Plaintiff-Petitioner (“Petitioner”) from his family is unconstitutional. The reasons offered by Respondents for the delayed adjudication of his mother’s sponsorship application do not justify his ongoing custody and fail to account for the lengthy delays created by the agency itself or Petitioner’s ongoing psychological suffering in ORR custody. It is in Petitioner’s best interest to be returned to his family, and the proper remedy is his immediate release.

ARGUMENT

I. Respondents’ Challenge to Petitioner’s Fifth Amendment Procedural Due Process Claim Is Legally and Factually Flawed¹

Respondents assert that “nothing” about ORR’s ongoing custody of E.H.C.F. runs afoul of the Constitution, arguing that Petitioner has been afforded the requisite process to justify the government’s continued deprivation of his rights to freedom from confinement and family integrity. ECF. No. 25 at pp. 20-22. *See* U.S. Const., Art. V. However, Respondents’ procedural due process analysis under *Mathews v. Eldridge*, 424 U.S. 319 (1976) is fatally flawed.

A. Respondents Mischaracterize the Relevant Interests at Stake in Cases Involving Unaccompanied Children in ORR Custody

Respondents identify “the necessity to ensure the safety of the Petitioner and the community” as private interests under the first *Mathews* factor and assert that such interests outweigh Petitioner’s constitutionally protected liberty interests in freedom from confinement and family unity. ECF 25, p. 21. But such factors are more properly considered under the rubric

¹For purposes of this Reply, Petitioner focuses on his procedural due process claim as it engages most of Respondents’ other arguments. But Respondents’ Opposition ignores Petitioner’s weighty claim that his continued custody by ORR violates his constitutional right to substantive due process as well. For the reasons articulated in this Reply, Respondents cannot show that there is a “compelling reason for depriving [him] of his family integrity... or that its policy is narrowly tailored to achieve that compelling reason.” *J.S.R. by and through J.S.G. v. Sessions*, 330 F. Supp. 3d 731, 741 (D. Conn. 2018).

of the government's interest in "ensuring that it releases a UAC only when consistent with its statutory mandate, and also in protecting the welfare of the UAC and the public at large." *Santos v. Smith*, 260 F. Supp. 3d 598, 615 (W.D. Va. 2017). Rather, the private interests at stake are the Petitioner's interests in liberty and family unity – among the most established and essential interests under the Constitution. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) ("the interest in being free from physical detention" by the state is "the most elemental of liberty interests"); *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000) ("[T]he interest of parents in the care, custody, and control of their children [] is perhaps the oldest of the fundamental liberty interests . . .").

Further, Respondents' assertion that children "are always in some form of custody," ECF 25 at pp. 16, 23 (quoting *Reno v. Flores*, 507 U.S. 292, 302 (1993)), while technically correct, does not mean that government custody is the same as the custody of parents. It is beyond dispute that due process is required before the state may remove a child from parental custody, *In re Gault*, 387 U.S. 1, 13 (1967), because "[i]n our society, children normally grow up in families, not in government institutions." *Reno*, 507 U.S. at 318 (O'Connor, J. and Souter, J., concurring). And children, like adults, "possess a constitutionally protected interest in avoiding unjustified physical restraint." *Lucas R. v. Becerra*, 2022 WL 2177454, at *14 (C.D. Cal. Mar. 11, 2022).

Moreover, the cases cited by Respondents to justify government interference with the right to family integrity are inapposite. ECF 25 at p. 22. *Martin v. St. Mary's Dep't of Soc. Servs.* 346 F. 3d 502, 503-506 (4th Cir. 2003) involved the removal of children from their mother following allegations of neglect. *Friedman v. New York City Admin. for Children's Servs.* No. 04-CV-3077(ERK), 2005 WL 2436219, at *5 (E.D.N.Y. Sept. 30, 2005) also involved allegations of neglect and focuses specifically on the "compelling governmental interest" in the protection of children "where their protection is considered necessary as against the parents themselves." ECF 25 at p.22. In the present case, there are no such allegations.

B. Respondents Fail to Provide Sufficient Justification for ORR's Delayed Adjudication of Ms. [REDACTED] Sponsorship Application

In its analysis of the process provided to Petitioner under the second *Mathews* factor, Respondents claim that “ORR worked diligently to adjudicate the sponsorship application” and blame Petitioner’s family for his prolonged detention. ECF 25 at p. 22. This framing fails to acknowledge that when a parent seeks reunification with a child in ORR custody, the burden should be on the agency to justify its continued custody of the child, rather than on the parents to demonstrate suitability. *See, e.g., Maldonado v. Lloyd*, 2018 WL 2089348 at *9 (S.D.N.Y. 2018); *Santos*, 260 F. Supp. at 613; *Beltran v. Cardall*, 222 F. Supp. 3d 476, 485 (E.D. Va. 2016). Such a burden is consistent with the allocation of constitutional interests in the present case. Nonetheless, the burden has fallen entirely to Petitioner’s mother to convince the agency to release Petitioner, while “[a]t no point was the onus on ORR to justify its deprivation of the Petitioner’s fundamental rights.” *Beltran*, 222 F. Supp. 3d at 485.

Specifically, Respondents argue that “the length of time it has taken to complete the process is the result of several factors including the inability of the alternative caregiver to provide valid identification, the failure of Ms. [REDACTED] to identify new household members, and the concerns for Petitioner’s safety, and the community, voiced by the Petitioner himself.” ECF 25 at p. 18, 22. As demonstrated below, none of these reasons justify ORR’s prolonged delay in adjudicating Ms. [REDACTED] sponsorship application, and Respondents fail to account for the significant agency-created delays that have resulted in eight-months of family separation.

1. Concerns Relating to Petitioner’s Purported [REDACTED]

Respondents claim that “Petitioner’s [REDACTED], his statements regarding his concerns for his safety if returned to his sponsor’s house, and the concern for the safety of the community, justifies the time it has taken to adjudicate this sponsorship

application.” ECF 25 at p. 20. They further represent that “additional sponsorship vetting” should take “15-20 business days from December 29, 2025.” *Id.* However, Respondents fail to explain ORR’s eight-month delay in investigating these concerns.

ORR has been on notice of Petitioner’s purported [REDACTED] since the day he entered the agency’s custody on May 11, 2025. Ex. A, ORR Record of Petitioner G [REDACTED] Disclosure, May 11, 2025 (CLE Event ID [REDACTED]). ORR records provide that on May 11, 2025, Petitioner disclosed to a case manager that “he is affiliated with [REDACTED] and had previously been involved in physical altercations with [REDACTED].” *Id.* The record from May 12, 2025, further provides that “he joined the [REDACTED] for protection against other [REDACTED] that are in his neighborhood,” and “his parents did not approve of him being in the [REDACTED].” *Id.* Ex. B, ORR Record of Petitioner [REDACTED] Disclosure, May 12, 2025 (CLE Event ID [REDACTED]). However, it was not until the undersigned counsel’s telephone call with Respondents’ counsel on December 29, 2025 that ORR identified Petitioner’s alleged [REDACTED] [REDACTED] as a potential barrier to release. Ex. C, Affidavit of Attorney Elizabeth Badger, Political Asylum/Immigration Representation (PAIR) Project, January 9, 2026, ¶ 5; Ex. D, Affidavit of Attorney Tess Reagan, Kids in Need of Defense (KIND), January 9, 2026, ¶ 5. In light of the due process concerns at stake in detaining and separating a child from his parents, ORR cannot now further delay the process by raising and investigating a concern it could have addressed eight months ago.

Despite these early reports in the ORR record, Respondents represent that concerns involving Petitioner’s alleged [REDACTED] arose in an interview with the Petitioner on September 12, 2025, and that a clinician later met with Petitioner on December 15, 2025 “to discuss the statement he made during the home study interview about his [REDACTED] and

safety concerns.” ECF 25 at pp. 14-15. Not only does this representation fail to account for Petitioner’s prior disclosure months earlier, it also fails to explain the delay in investigating the disclosure after September 12th, or what additional vetting is now required. ECF 25 at p. 20.

Respondents’ belated concern that Petitioner’s alleged [REDACTED] presents a threat to his safety also contradicts the conclusions of several key stakeholders, including from within ORR itself, recommending release and reunification. Both home studies resulted in positive recommendations for release. ECF 25 at pp. 13, 15; ECF 21, Ex. B, 3. Moreover, even after September 12, 2025, ORR Federal Field Specialist (“FFS”) Ruth Yanez; the staff of the Noank Community Support Services Program; and an ORR-appointed independent Child Advocate all issued recommendations for release and reunification. ECF 21, Ex. B, 1, 4. According to the Child Advocate’s Best Interest Determination on December 16, 2025, “no safety concerns were identified with the reunification.” ECF 21, Ex. B, 3. These conclusions are bolstered by the fact that Petitioner has “consistently and unequivocally expressed his desire to reunify with his parents.” ECF 21, Ex. B, 6. He has discussed safety planning strategies with his mother, and they are willing to work together to avoid unsafe situations, including by taking Uber rides to school; changing high schools, if necessary; calling the police if there is a safety concern; and getting support from Central American Youth Initiative (CAYI) at Roca.² Taken together, these facts establish that Petitioner will be safe at home and supported in the community.

Moreover, Respondents cannot demonstrate that Petitioner presents a “concern for the safety of the community.” ECF 25 at p. 20. When Petitioner first entered ORR custody on May 11, 2025, ORR placed him at the Compass Connections San Antonio Heightened Supervision

²CAYI is an evidence-based program in Chelsea, Massachusetts that disrupts cycles of violence impacting at-risk young men. Ex. E, Letter from Roca Program Director, January 8, 2026.

Facility.³ Ex. F, Compass Connections Intake Packet Face Sheet, May 11, 2025. Then, on August 7, 2025, ORR itself transferred Petitioner from that heightened supervision facility to the Mystic-Noank Shelter in Connecticut, noting, “juvenile respondent is suitable for a less restrictive level of care.”⁴ Ex. G, ORR Notice of Transfer to ICE Chief Counsel, August 4, 2025; Ex. H, ORR Transfer Request and Tracking Form, August 7, 2025. The undersigned counsel has not been informed of any disciplinary incident during Petitioner’s time at the Noank Shelter, much less any concern that he presents a danger to others. Ex. C, ¶¶ 12-14, 16. Moreover, the juvenile charges arising from his first and only arrest on May 8, 2025, have been dismissed. ECF 21, Ex. E. Taken together, the evidence demonstrates that any concerns that may exist as to the safety of Petitioner or the community are not substantial enough to justify additional delay.

2. Changes in Household Composition

Ms. [REDACTED], belated disclosure of Mr. Contreras Romero’s presence in the household does not justify Petitioner’s continued separation from his family.⁵ ECF 25 at p. 18, 22. First, Petitioner should have been released from ORR custody before his father returned to the home on June 13, 2025, which would have obviated this concern entirely. ECF 21, Ex. A, ¶ 23. Specifically, Respondents agree that the sponsorship application was submitted by May 26, 2025, ECF 25 at p. 12. At that point, ORR was required to adjudicate the application within 10 calendar days. 45 C.F.R. § 410.1205(b). Respondent claims that the necessity of a home study in

³ A “heightened supervision facility” is “designed for an unaccompanied child who requires close supervision but does not need placement in a secure facility...” 45 C.F.R. § 410.1101.

⁴ An ORR “shelter” is a type of “standard program” where unaccompanied children are held. 45 C.F.R. § 410.1001. “All homes and facilities operated by a standard program...shall be “non-secure”...” *Id.*

⁵ Ms. [REDACTED] has explained that she was not intending to hide the presence of her husband in the home and that she presumed the government was aware of his whereabouts due to his release on bond. ECF 21, Ex. A, ¶ 23. Moreover, Respondents have not cited any written ORR policy that would have required her to inform the agency of additional members of her household or provided documentation that she was informed of such a policy. ECF 25 at 19. Such an obligation does not appear anywhere in the last publicly available version of the ORR Sponsor Care Agreement, which identifies the myriad other continuing disclosure requirements imposed on ORR sponsors. Ex. K, ORR Sponsor Care Agreement (Rev. 01/31/2020).

this case presented an “unexpected delay,” but no home study was required under the TVPRA, the Foundational Rule, or any other guidance at the time. 8 U.S.C. 1232(c)(3)(B), 8 C.F.R. § 410.1204 (b). The sole justification offered for the home study is § 2.4.2 of the ORR Unaccompanied Alien Children Bureau Policy Guide (“UC Policy Guide”), which ORR appears to have unilaterally modified on July 14, 2025⁶ – *after the first home study was conducted* – to heighten sponsorship vetting requirements without notice and comment. ECF 1 at ¶¶ 31, 57.⁷

Second, even assuming the vetting process needed to begin again after Petitioner’s father’s return to the household, Respondents fail to explain the agency’s subsequent delay in completing the process. According to Respondents, ORR learned of his presence on September 15, 2025, but did not reach out to Ms. [REDACTED] about conducting additional vetting until October 9, 2025. ECF 25 at p. 14. Mr. Contreras Romero was then made to wait until October 31, 2025 for a fingerprinting appointment.⁸ *Id.* The second home study was not completed until December 4, 2025, ECF 21, Ex. A at ¶ 26, which was 80 days after Petitioner’s father was discovered in the home. Respondents offer no explanation for that extraordinary delay, though the first home study was completed and approved within 20 days of Ms. [REDACTED] submitting her sponsorship application. ECF 25 at pp. 12-13.

⁶ Neha Desai and Melissa Adamson, et. al, The Unraveling of ORR: A Quick and Calculated Undoing of a System Intended to Protect Children, NAT’L CTR. FOR YOUTH L., at 4, 6-8 (Sept. 2025), <https://youthlaw.org/resources/the-unraveling-of-orr-a-quick-and-calculated-undoing-of-a-system-intended-to-protect-children/>.

⁷ Respondents also fail to explain why ORR waited until June 10, 2025 to run Ms. [REDACTED]’s and [REDACTED]’s child abuse and neglect checks and until June 17, 2025 to submit their birth certificates to the Honduran consulate for authentication, when these things could have been done within the 10-days required by the regulations. ECF 25 at pp. 12-13. Indeed, Respondents concede that ORR was not required seek consular authentication, noting that “ORR *may* consult with the issuing agency” to verify a sponsor’s birth certificate, but offers no explanation as to why authentication was required in this case. ECF 25 at 13 (quoting 45 C.F.R. § 410.1202(b)) (Emphasis added.)

⁸ ORR records provide, “The case at the moment is stuck, there hasn’t been communication from DVS to the sponsor.” Ex. H, Noank Shelter Case Management Weekly Updates Notes, September 25, 2025.

3. 's Purported Inability to Produce ORR-Approved ID Documents

Respondents also claim that “the inability of the alternative caregiver to provide valid identification” is responsible for Petitioner’s prolonged custody and family separation. ECF 25 at p. 22. But they fail to account for the fact that his alternative caregiver and 19-year-old sister, , provided six different forms of identification to ORR, including her Honduran passport and high school ID on June 9, 2025, her birth certificate on or before June 17, 2025, her library card on July 31, 2025, her college ID in August 2025, and her Employment Authorization Document (EAD) on October 3, 2025. ECF 21, Ex. A. ORR rejected all of these documents, except for her EAD, because they did not comport with § 2.2.4 of the UC Policy Guide, which was unilaterally revised on March 7, 2025 to limit the list of acceptable documents to prove sponsor identity. ECF 1 at ¶ 31. Respondents do not address Petitioner’s contention that ORR acted arbitrarily and capriciously by imposing these new requirements without adequate justification.⁹ Moreover, Respondents do not account for their own delays in attempting to collect acceptable identification from  including waiting 43 days – from June 9 to July 22 – to inform her that her valid passport was insufficient proof of identity, and then delaying the initiation of a waiver process until August 14. ECF 25 at p. 13.¹⁰

The myriad agency-created delays in this case amount to a violation of Petitioner’s due process rights. Respondents offer no citation for their assertion that “the amount of time a child

⁹ See *Angelica S. v. HHS*, 1:25-cv-01405-DLF, (D.D.C. June 9, 2025). More generally, Respondents do not meaningfully contest Petitioner’s claim that ORR has violated the Administrative Procedures Act (APA), 5 U.S.C. §§ 701, et. seq. by acting in excess of their statutory authority and not providing adequate justification for their new sponsorship vetting requirements, including by weaponizing the sponsorship process as a tool of immigration enforcement, expanding the use of home studies, limiting the forms of acceptable identification. Nor to Respondents address Petitioner’s claim that ORR failed to follow its own “existing valid regulations,” in violation of *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

¹⁰ Respondents’ counsel represented in a status conference on December 30, 2025 that ’s ID requirement had been “waived” on August 14, 2025, but Respondents’ Opposition indicates only that the waiver was “initiated.” ECF 25 at p.13.

spends in ORR custody alone does not amount to deprivation by ORR.” ECF 25 at p. 22. To the contrary, “‘significant’ and ‘unexplained delay[s] in responding to a [a proposed sponsor’s] unification request’ violate due process irrespective of other procedural defects.” *Lucas R. v. Becerra*, 2022 WL 2177454, at *27. (citing *Santos v. Smith*, 260 F. Supp. 3d at 613-14).

C. Respondents Mischaracterize the Government Interest At Stake

It is indisputable that ORR has a “significant interest” in “ensuring that it releases a UAC only when consistent with its statutory mandate.” *Santos v. Smith*, 260 F. Supp. 3d at 614. In line with the statute, the primary interest of the government is to abide by the mandatory statutory language that a UC “*shall be* promptly placed in the least restrictive setting that is in the best interest of the child.” 8 U.S.C. § 1232 (c)(2)(A) (emphasis added). The TVPRA also prohibits ORR from placing a child with a sponsor who presents a risk to the child’s wellbeing. 8 U.S.C. § 1232(c)(3)(A). Beyond these mandatory requirements, the statute provides that ORR “*may* consider danger to self, danger to the community, and risk of flight.” 8 U.S.C. § 1232 (c)(2)(A) (emphasis added). Thus, while danger is a permissible consideration, it should not override the obligation to comply with the mandatory requirements of the statute.

Here, Respondents frame the government interest backwards, focusing entirely on the danger posed to Petitioner by [REDACTED] and concern for community safety. ECF 25 at p. 22. At the same time, they fail to identify any evidence that Ms. [REDACTED] is incapable of providing for Petitioner’s wellbeing; fail to sufficiently justify ORR’s prolonged adjudicatory delays; and fail to acknowledge that the Child Advocate, staff of the Mystic-Noank Shelter, and ORR FSS Yanez have all determined that it is *actually* in Petitioner’s best interest to be released to his family. ECF 6, Ex. B, 1, 4. Respondents similarly ignore ongoing harm to Petitioner in ORR custody,

including anxiety, depression,¹¹ and severe educational inadequacies.¹² The government's interest as *parens patriae*, as articulated by Respondents, must account for these facts. ECF 25 at p. 22.

II. Petitioner Should Be Released to His Mother's Custody Immediately

The relief required in this case is immediate release of Petitioner, not remand to the agency. ECF 25 at p. 23. First, ORR's delayed adjudication of Ms.  sponsorship application is actionable because it has already circumscribed the "rights and obligations" of Petitioner and created the "legal consequence[]" of his continued detainment. *Bennett v. Spear*, 520 U.S. 154, 177-78 (1977) (Internal citations omitted.) Second, Petitioner has alleged a violation of his fundamental liberty interests. ECF 1, ¶¶ 88-100. "[A]dditional process at this point would...be of marginal benefit" and perpetuate the ongoing violation of his constitutional rights. *Beltran*, 222 F. Supp. 3d at 489. Finally, this Court has "inherent authority" to set bail pending adjudication of a habeas petition when "necessary to make the habeas remedy effective." *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001).

CONCLUSION

For the foregoing reasons, the Plaintiff-Petitioner respectfully requests that the Court grant his Motion for a Temporary Restraining Order and Preliminary Injunction.

Dated: January 9, 2025

Respectfully submitted,

/s/ Leanne R. Gale

Leanne R. Gale, (CT phv209116)

¹¹ A forensic evaluation conducted on December 16, 2025 diagnosed Petitioner with Generalized Anxiety Disorder and Major Depressive Disorder, noting that "it is highly likely that his depressive and anxious symptoms developed as a result of his abrupt and prolonged removal from his family at the age of 15." ECF 21, Ex. C at ¶ 23.

¹² Petitioner has also been deprived of a proper high school education for over half a year. Respondents concede that the shelter provides only a single "multipurpose room (dining, class, and activity room)" "one teacher" and "one assistant teacher" for children of varied ages and language abilities. ECF 25 at p. 11, fn. 4. This is grossly inadequate for Petitioner, who has ADHD and requires a structured learning environment to succeed. ECF 21, Ex. C at ¶ 22.

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CERTIFICATE OF SERVICE

I certify that on January 9, 2026, I electronically filed the foregoing document(s) and that they are available for viewing and downloading from the Court's CM/ECF system, and that the participants in the case that are registered CM/ECF users will be served electronically by the CM/ECF system. I further certify that a copy of the foregoing document(s) was mailed via U.S. Mail to the person(s) and entities listed below:

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