

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

E.F.E.L.,	)	
Petitioner,	)	
	)	Case No. 26-cv-2507 (SJC)
v.	)	
	)	
KRISTI NOEM, Secretary of Homeland Security,	)	
ROBERT F. KENNEDY, JR., Secretary of Health	)	
and Human Services,	)	
ANGIE SALAZAR, Acting Director of the Office	)	
Of Refugee Resettlement;	)	
DAVID SINSKI, Chief Executive and Vision	)	
Officer of Heartland Human Care Services,	)	
Respondents.	)	
_____	)	

**PETITIONER'S REPLY TO GOVERNMENT'S OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS**

COMES NOW E.F.E.L., the Petitioner, represented by his undersigned Pro-Bono attorneys, and very respectfully replies to the Government's Opposition to his Petition for a Writ of Habeas Corpus.

Introduction

The government admits that E.F.E.L.'s brother was his ORR approved sponsor when E.F.E.L. was re-arrested, without reason, in December 2025. Moreover, the government advances no evidence of any changed circumstance that undermines its sponsorship determination. Thus, the question here is whether the government is violating Petitioner's Fifth Amendment rights, the HSA and TVPRA in refusing to release E.F.E.L. into his brother's custody, despite having already

determined that his brother can provide the least restrictive setting that is in the best interest of E.F.E.L and releasing him to his brother's custody as required by the HSA and TVPRA. At least one judge from this district has held that once the government has released a UAC upon a finding that he is not a danger to himself or his community and does not present a flight risk, due process prevents the government from re-arresting the detainee in the absence of a changed circumstance. *See A.N.P.S. v. Salazar, et als*, 25cv14778, Dkt. 20 (N.D.ILL. 2025). *See also Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196-97 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (same).¹ The Petitioner urges this Court to follow the sound holdings in *A.N.P.S.* and *Saravia* and order E.F.E.L.'s release forthwith.

The government argues that E.F.E.L. must exhaust administrative remedies. As established in his Petition, E.F.E.L.'s Fifth Amendment claims are not subject to administrative exhaustion requirements. But E.F.E.L. exhausted administrative remedies when his brother completed a sponsorship application in January 2025, pursuant to which E.F.E.L. was released into his brother's custody on March 2, 2025.

The government ignores the crux of E.F.E.L.'s claims. E.F.E.L. was 14 years old when he fled Guatemala and entered the U.S. as an UAC in January 2025. He was detained by immigration authorities and released to his brother's custody on March 2, 2025, **after** an ORR determination that (1) his brother was a qualified sponsor; who (2) could provide E.F.E.L. with the least

¹ Because ORR had previously released plaintiffs to a sponsor, the courts reasoned, ORR must have necessarily determined that each plaintiff was not a danger to himself, his community or a flight risk. *Saravia*, 280 F. Supp. 3d at 1196 (citing 8 U.S.C. § 1232(c)(2)(A) (requiring that ORR consider such factors before placing a UAC)); *A.N.P.S.* at p. 12.

restrictive setting that was in the best interest of E.F.E.L. — a determination that mandates E.F.E.L.’s release under the TVPRA.

Notwithstanding ORR’s determination, a demonstrated lack of changed circumstances, and after 10 months in his brother’s custody without issue, HSI admittedly arrested E.F.E.L. on December 3, 2025, **without reason**. Despite E.F.E.L. having a “Verification of Release” (“VOR”) card, indicating he was lawfully released into his brother’s custody, the government failed to promptly release E.F.E.L. to his brother’s custody, as mandated by the TVPRA. As a result, the government has unlawfully detained E.F.E.L. and isolated him from his family for the last three and a half months— a prohibited action that has been emotionally and physically detrimental to E.F.E.L.

The trauma the separation from family and isolation in detention centers causes children has been documented by Congress, which passed the TVPRA to directly address it.² The TVPRA directs ORR to “**promptly**” release E.F.E.L. from its custody to the “**least restrictive setting that is in the best interest of [E.F.E.L.]**.” 8 U.S.C. § 1232(c)(2) (Emphasis added).

The government does not contest that E.F.E.L.’s brother is a suitable sponsor. Instead, it maintains that it cannot release E.F.E.L. to his brother’s custody, because his brother cannot comply with a **new** ORR policy implemented **after** its determination that releasing E.F.E.L. to

² See also e.g., *Jacinto-Castanon de Nolasco v. U.S. Immigr. & Customs Enf’t*, 319 F. Supp. 3d 491, 502 (D.D.C. 2018) (family “[s]eparation irreparably harms plaintiffs every minute it persists.”); *L.V.M.*, 318 F. Supp. 3d at 618 (holding that delayed release from ORR custody “incidental to the challenged director review policy (more than 35 days) is clearly long enough to cause irreparable harm to Plaintiffs” and noting that “neither party questions that prolonged detention is deleterious to young children, and, obviously, the longer the detention, the greater the harm.”); *Lucas R., et al v. Becerra, et al*, 2022 WL 2177454, at *33 (C.D.CA. 2022); *Saravia*, 280 F. Supp. 3d at 1200.

his brother's custody is in E.F.E.L.'s best interest and his release on March 2, 2025. The new policy, abruptly promulgated on March 7, 2025, without prior notice, rejects most identification documents listed on ORR's Family Reunification Application ("FRA") form, requiring instead that sponsors have a U.S. issued identification document ("the ORR Document Policy"). ORR is unlawfully applying the ORR Document Policy retroactively to prevent E.F.E.L.'s reunification with his family.

The government failed to inform the Court that the United States District Court for the District of Columbia certified a class of children in the custody of ORR, which includes E.F.E.L., and issued a preliminary injunction against the U.S. Department of Health and Human Services ("HHS"), preventing it from creating a document policy that departs from its previous policy. *See Angelica S., et al v. U.S. Dpt. Of Health and Human Services, et al*, 786 F.Supp.3d 158, 179 (D.D.C. 2025). In granting a preliminary injunction, the D.C. Court concluded "that it is substantially likely that ORR acted arbitrarily and capriciously by not providing adequate justification for its new sponsor documentation requirements." *Id.* The injunction prevents HHS "from creating a new blanket policy that departs from its previous one without explaining how it weighed the disrupted reliance interests against other valid considerations." *Id.* HHS has not explained "how it weighed the disrupted reliance interests against other valid considerations;" therefore, it cannot implement the ORR Document Policy.

Further, E.F.E.L. submits that, even if the Court were to determine that ORR can apply the ORR Document Policy, and do so retroactively to E.F.E.L.'s sponsor, which is denied, the ORR Document Policy violates E.F.E.L.'s Fifth Amendment rights because the ORR Document

Policy is arbitrary and capricious as it is completely unrelated to the intent behind the TVPRA, the suitability of a sponsor or the best interest of E.F.E.L. In addition, the government admittedly failed to consider the disconnect between the ORR Document Policy and the issue it purports to address as well as the impact of the new policy on E.F.E.L. and other children similarly situated, their reliance on the government's representations in their old policy and the FRA or less burdensome measures.

The government has articulated no justifiable reason for the ORR Document Policy. The record makes clear that the new policy has no rational basis and the government's reasons for enacting the ORR Document Policy are pretextual. The government regularly accepts foreign issued identification documents in many other contexts. Hence, the ORR Document Policy is an unlawful family separation policy under the guise of preventing fraud. It undermines TVPRA's mandate by transforming the ORR from a program to foster child welfare to a program that prioritizes enforcement by coercing minors into waiving their rights and fostering the removal of undocumented children and their sponsors.

The current administration has made no secret of its wish to deport as many undocumented persons as possible, including unaccompanied children, without due process. In practice, under the ORR Document Policy, unaccompanied minors are removed from their communities, isolated from their families, placed in facilities unequipped to ensure their welfare and effectively coerced into waiving their rights. Immigration Enforcement Agents are brought into sponsor interviews to intimidate potential sponsors and coerce them into desisting in their applications. The ORR Document Policy is just one more tactic. These goals are plainly unlawful and a blatant violation

of the TVPRA, which requires ORR to act in the best interest of the child; not to engage in immigration enforcement. Even the appearance of coordination between ORR and immigration-enforcement personnel intimidates undocumented but qualified sponsors into not sponsoring loved ones, contrary to the TVPRA's stated and sole goal of ensuring the children's best interest and welfare.

The TVPRA further requires that ORR act on sponsors' applications on an expedited basis and not later than 10 days from the **filing** of a sponsorship petition. The government admits that despite E.F.E.L.'s brother filing a second petition in December 2025, after E.F.E.L.'s unlawful arrest, it failed to act on it within 10 days. That E.F.E.L.'s brother withdrew from consideration **three months** later, when it became evident that he could not comply with the ORR Document Policy, which was being unlawfully and retroactively applied to him, is of no consequence. Petitioner's brother demonstrated and **ORR agreed** that he can provide "the least restrictive setting that is in the best interest of" E.F.E.L. Therefore, the TVPRA requires that he be released into his brother's custody.

Petitioner's continued detention impedes familial association and prolongs baseless institutional custody, which is not rationally related to a legitimate government interest. It is also procedurally flawed. It violates the HAS, the TVPRA, and Petitioner's Fifth Amendment rights. Therefore, Petitioner respectfully requests that he be released into his brother's custody forthwith.

Argument

The TVPRA is not concerned about the source or nature of a sponsor's identification documents; it is concerned, first and foremost, with the safety and welfare of the children it aims

to protect. It provides, in relevant part, that HHS must “establish policies and programs to ensure that unaccompanied alien children in the United States are protected from traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.” 8 U.S.C. § 1232(c)(1). TVPRA regulations direct ORR to assess whether a sponsor “is capable of providing for the unaccompanied minor’s physical and mental well-being.” 45 C.F.R. §410.1202(b). Moreover, they prohibit sponsor denials based solely on immigration status. *See* 45 C.F.R. § 410.1201(b) (2024). Once the ORR determines that a sponsor is qualified and can provide a setting that is in the best interest of the child, the TVPRA provides that ORR must “release a child from its custody without unnecessary delay.” *Id.* at §410.1201. When the sponsor is a close relative, an unnecessary delay is more than 10 days. *Id.* at §410.1205(b).

- I. ORR determined that E.F.E.L.’s brother is a qualified sponsor, and it is in E.F.E.L.’s interest to be released into his brother’s custody; therefore, ORR’s regulations mandate that E.F.E.L. be released forthwith.

The government’s argument that E.F.E.L. needs to exhaust administrative remedies is absurd. E.F.E.L. exhausted administrative remedies when he first came into ORR’s custody and was released into his brother’s custody on March 2, 2025. E.F.E.L.’s illegal arrest and continued detention since December 3, 2025, violates the TVPRA, ORR’s regulations and E.F.E.L.’s Fifth Amendment rights. Thus, E.F.E.L. must be released to his brother’s custody forthwith.

The government’s factual background does not tell E.F.E.L.’s story completely or accurately. E.F.E.L. was 14 years old when he entered the U.S. as an unaccompanied minor in January 2025. He was detained by immigration authorities and his brother promptly applied to

serve as his sponsor. E.F.E.L.'s brother provided all ORR required documents and underwent a background check as well as a DNA analysis. After reviewing E.F.E.L.'s brother's FRA, ORR determined that E.F.E.L.'s brother was (1) a qualified and suitable sponsor, and (2) could provide E.F.E.L. with the least restrictive setting that was in the best interest of E.F.E.L. – a determination that mandates E.F.E.L.'s release under the TVPRA. *Id.* § 410.1201 (ORR must “release a child from its custody without unnecessary delay”). ORR released E.F.E.L. into his brother's custody on March 2, 2025.

The government does not allege that there is a changed circumstance. For 10 months, E.F.E.L.'s brother provided for him, physically and mentally, including ensuring that he attended school. Notwithstanding, HSI admittedly arrested E.F.E.L. on December 3, 2025, **without reason**, and despite E.F.E.L. having a VOR card on his person, indicating he was lawfully released into his brother's custody. E.F.E.L. was in the middle of his 10th grade when he was unlawfully arrested. Significantly, the government admits that it was able to contact E.F.E.L.'s brother as soon as E.F.E.L. came into ORR's custody on December 3, 2025, and he expressed a willingness to continue sponsoring E.F.E.L. Nonetheless, the government failed to release E.F.E.L. to his brother's custody in December 2025, as mandated by the TVPRA and its regulations. *Id.*

The statutory mandate for the release of a child without unnecessary delay is strict: ORR shall ordinarily adjudicate an FRA from a close relative within 10 days, 14 days for other sponsors. 45 C.F.R § 410.1205(b). Once the ORR determines that a sponsor is qualified and can provide a setting that is in the best interest of the child, the TVPRA provides that ORR must

“release a child from its custody without unnecessary delay.” *Id.* at §410.1201. ORR determined that it is in E.F.E.L.’s best interest to be in his brother’s custody more than a year ago.

The re-detention of E.F.E.L., absent a showing that the circumstances surrounding his prior release changed, is a violation of his due process rights. *A.N.P.S., supra, p. 2; Saravia, supra, 280 F. Supp. 3d at 1196.*

II. The government cannot enforce the ORR Document Policy in E.F.E.L.’s case.

Even if this Court were to determine that E.F.E.L.’s brother must be reconsidered as a sponsor, which is denied, the government cannot enforce the ORR Document Policy against him. The United States District Court for the District of Columbia provisionally certified a class of children in the custody of ORR for purposes of issuing a preliminary injunction. The class includes all unaccompanied children:

- (1) who were in or transferred to the custody of HHS on or before April 22, 2025;
- (2) who have identified a potential sponsor; and
- (3) whose sponsor’s family reunification application has been denied, closed, withdrawn, delayed, or cannot be completed because the sponsor is missing documents newly required on or after March 7, 2025 [when the ORR Document Policy was issued].

Angelica S., supra, 786 F.Supp.3d at 179. Because E.F.E.L. was transferred to the custody of HHS on or before April 22, 2025, and has a sponsor who could not complete a second application because he was missing documents newly required after March 7, 2025, E.F.E.L. is a member of the class.

As stated, the Court in *Angelica S* issued a preliminary injunction enjoining HHS “from creating a new blanket policy that departs from its previous one without explaining how it weighed the disrupted reliance interests against other valid considerations.” *Id.* HHS has not

explained “how it weighed the disrupted reliance interests against other valid considerations;” therefore, it cannot rely on the ORR Document Policy to prevent E.F.E.L.’s brother from sponsoring him.

III. The ORR Document Policy is being applied to E.F.E.L.’s sponsor retroactively in violation of law.

Even assuming, for purposes of argument, that the government was not compelled to release E.F.E.L. when he was detained in December 2025, which is denied, and is not enjoined by the *Angelica S* preliminary injunction from enforcing the ORR Document Policy against E.F.E.L.’s sponsor, which is also denied, ORR cannot apply the ORR Document Policy retroactively.

ORR determined prior to March 7, 2025, that E.F.E.L.’s brother was a qualified and suitable sponsor for E.F.E.L. and he could provide the least restrictive setting in the best interest of E.F.E.L. Pursuant to that determination, ORR released E.F.E.L. into his brother’s custody on March 2, 2025.

Under the TVPRA regulations in effect at the time E.F.E.L. was released into his brother’s custody, foreign-issued forms of identification were permissible. Section 410.1202(b) of the TVPRA regulations specifically provided that a sponsor’s identity documentation need *not* come from the United States:

“ORR may consult with the issuing agency (e.g., consulate or embassy) of the sponsor’s identity documentation to verify the validity of the sponsor identity document presented.”

On March 7, 2025, ORR, unilaterally and without any notice to sponsors or children, issued the ORR Document Policy, Policy Guide § 2.2.4, restricting acceptable identity documents for

sponsors to U.S. issued documents.³

The retroactive application of the ORR Document Policy to E.F.E.L.'s brother (who has no U.S. issued Id.) is unlawful. An agency may not “promulgate retroactive rules without express congressional authorization.” *Kirwa v. U.S. Dep’t of Defense*, 285 F. Supp. 3d 257, 270 (D.D.C. 2018) (quoting *Arkema, Inc. v. EPA*, 618 F.3d 1, 7 (D.C. Cir. 2010)). This principle applies to agency policy changes. *Id.* at 271; *see also De Niz Robles v. Lynch*, 803 F.3d 1165, 1172 (10th Cir. 2015) (“[T]he more an agency acts like a legislator— announcing new rules of general applicability—the closer it comes to the norm of legislation and the stronger the case becomes for limiting application of the agency’s decision to future conduct.”).

“A rule operates retroactively when it ‘would impair rights a party possessed when he acted, increase a party’s liability for past conduct, or impose new duties with respect to transactions already completed.’” *Landgraf v. USI Film Prods.*, 511 U.S. 244, 280 (1994). The retroactivity determination “should be informed and guided by familiar considerations of fair notice, reasonable reliance, and settled expectations.” *INS v. St. Cyr*, 533 U.S. 289, 321 (2001) (quoting *Martin v. Hadix*, 527 U.S. 343, 358 (1999)).

Here, the ORR Document Policy clearly impaired E.F.E.L.’s brother’s right to serve as a sponsor for E.F.E.L. When he tried to complete a new application after E.F.E.L.’s unlawful arrest in December 2025, he could not do so because he does not possess a U.S. issued identification document. Under the previous policy, ORR determined that E.F.E.L.’s brother was a qualified and

³ The ORR Document Policy gives ORR discretion to waive the requirement of a U.S. issued identification document in the case of parental sponsors but only if the waiver is supported by a “clear justification.”

suitable sponsor and released E.F.E.L. into his custody on March 2, 2025.

The ORR Document Policy also imposed new duties on E.F.E.L.'s brother by demanding that he produce U.S. issued identification documents. In demanding that E.F.E.L.'s brother comply with the ORR Document Policy as a condition to releasing E.F.E.L. into his custody again, ORR impermissibly applied the ORR Document Policy retroactively as it used the policy to deny E.F.E.L.'s brother of a right he already possessed— custody of E.F.E.L. This impermissible action caused harm to E.F.E.L., and to similarly situated children, by denying them their right to be promptly released without unnecessary delay. *See Arkema, Inc. v. EPA*, 618 F.3d 1, 9 (D.C. Cir. 2010) (noting that effect of new EPA rule was to “undo what the EPA had, in practice, approved under” prior rules and was impermissibly retroactive); *Kirwa, supra*, 285 F. Supp. 3d at 271-72 (Department of Defense guidance, which changed requirements for certification necessary for expedited naturalization, was impermissibly retroactive as applied to service members who enlisted prior to the new guidance).

The retroactive application of the ORR Document Policy was also arbitrary and capricious because it failed to consider whether it was necessary to ensure that E.F.E.L.'s brother was still able to care for the well-being of E.F.E.L. Significantly, ORR had already confirmed E.F.E.L.'s brother's identity. It also failed to consider the impact such retroactive application would have on E.F.E.L. or his and his brother's reliance on ORR's prior decision that he was a suitable and qualified sponsor.

Last, permitting the retroactive application of the ORR Document Policy to a child, who was re-arrested without cause, while in his sponsor's custody, would have devastating

consequences and make a mockery of the TVPRA. The government argues that E.F.E.L. was not in the custody of his sponsor on December 1, 2025. But a child does not cease to be in the custody of his parents or legal guardian when he is away from home. E.F.E.L. was at a gas station near his house with a friend who was putting gas in a car when he was arrested. He was not engaged in the violation of any law. When he produced his VOR card, it was ignored by the detaining officers and later HSI. The government cannot ignore its prior sponsorship determination as well as the 10 months between March 2, 2025, and December 1, 2025, as if they never transpired. Nor can it re-arrest a child, without cause, and later claim he was somehow “not in his brother’s custody” at the time of his re-arrest.

If permitted to apply the ORR Document Policy retroactively, the government would proceed as it did in this case in every case where a child has been placed with a sponsor identified through foreign documents, that is, re-arrest the child, and demand that the sponsor comply with the new ORR Document Policy with no other purpose than to deny that sponsor the right he/she already possessed and detain the child, effectively using the ORR Document Policy as what it is – an immigration enforcement tool.

“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Although the law that recognizes minors, unlike adults, “are always in some form of custody,” minors nonetheless “retain a strong interest in being free from unnecessary government interference with their liberty.” *A.N.P.S., supra*, (citing *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1195 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v.*

Sessions, 905 F.3d 1137 (9th Cir. 2018) (citing *Schall v. Martin*, 467 U.S. 253, 265 (1984)).

Petitioner urges this Court not to permit the government's unlawful conduct and order his release forthwith.

IV. The ORR Document Policy violates the TVPRA's regulations.

The government completely ignores the conflict between the ORR Document Policy and the TVPRA regulations. Under the TVPRA regulations, foreign-issued forms of identification are permissible. Section 410.1202(b), 45 C.F.R., specifically provides that a sponsor's documentation of identity need *not* come from the United States:

“ORR may consult with the issuing agency (e.g., consulate or embassy) of the sponsor's identity documentation to verify the validity of the sponsor identity document presented.”

Therefore, the ORR Document Policy violates the TVPRA regulations.

Moreover, TVPRA regulations provide that ORR will not reject sponsors solely based on their immigration status. 45 C.F.R. § 410.1201(b) (2024). However, the ORR Document Policy, which demands proof of work authorization or other forms of US-issued identification such as State-issued driver's licenses, which are generally not available to sponsors without stable lawful immigration status, has the inevitable effect of denying sponsors precisely on that basis.

ORR acknowledged that the ORR Document Policy would lead to a decrease in the number of sponsors applying to sponsor a child and an increase in the number [of] care provider facilities.” 90 Fed. Reg. at 17439. This is wholly contrary to ORR's mandate under the TVPRA.

V. The ORR Document Policy violates E.F.E.L.'s Fifth Amendment Rights.

The Fifth Amendment mandates that no person shall “be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. The due process guarantee has both

procedural and substantive aspects. The government undermines Petitioner's Fifth Amendment claim, limiting itself to reciting the sponsorship application requirements while ignoring how the ORR Document Policy violates E.F.E.L.'s Fifth Amendment rights to substantive and procedural due process by creating arbitrary barriers to family reunification and prolonging E.F.E.L.'s unlawful and unjustified institutional detention.

A. The ORR Document Policy violates E.F.E.L.'s right to substantive due process.

As established in the Petition, and the government admits, E.F.E.L. has a right to liberty that is protected by the Fifth Amendment and may not be infringed upon without the due process of law. The Due Process Clause protects E.F.E.L.'s right to liberty against "certain government actions **regardless of the fairness of the procedures used to implement them.**" *Daniels v. Williams*, 474 U.S. 327, 331 (1986) (emphasis added). Thus, the government may not infringe E.F.E.L.'s right to liberty, unless the infringement is narrowly tailored to serve a compelling state interest. *United States v. Salerno*, 481 U.S. 739, 749 (1987).

By implementing policies, such as the ORR Document Policy, that are arbitrary and capricious, unsupported by agency evidence, not rationally related to the mandate of the TVPRA, and irrationally burdensome, the government failed to narrowly tailor its agency action to serve a compelling state interest and hence violated Petitioner's substantive due process right to his liberty.

1. The ORR Document Policy is arbitrary and capricious.

As the Supreme Court has instructed, "the agency must examine the relevant data and articulate a satisfactory explanation for its action including a **rational connection** between the

facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotations omitted) (emphasis added). An action is arbitrary and capricious if “the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Id.*

- a. ORR entirely failed to consider the impact of the ORR Document Policy and the reliance of sponsors on the old policy: an important aspect of the problem.

Because ORR immediately implemented the ORR Document Policy, which revised a preexisting policy as well as conflicted with representations made on its FRA, it needed to “assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns.” *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 33 (2020). ORR knew that the new document requirements would significantly impact children and their sponsors who acted in reliance on the previous documentation policies as well as pursuant to the representations by ORR on its FRA. The impact was particularly damaging to E.F.E.L., who traveled to the United States with the expectation that his brother could sponsor him, based on the earlier documentation requirements. And in fact, E.F.E.L.’s brother sponsored E.F.E.L successfully for 10 months without issue, until ORR changed the document requirements without warning and applied them retroactively. E.F.E.L. was arrested away from his home, though he possessed a valid VOR card, and detained again; the new requirements left him without viable sponsor options.

ORR had an obligation to consider the impact its new policy would have before changing the *status quo*. Not only did it not consider its impact, but it also failed to consider other less burdensome alternatives. *Cf. FCC v. Prometheus Radio Project*, 592 U.S. 414, 417 (2021) (applying arbitrary-and-capricious review to the FCC's weighing of a policy factor even though the FCC was not statutorily required to consider that factor). The government failed to provide a plausible explanation for the ORR Document Policy; therefore, it necessarily follows that the new policy is unsupported by a rational explanation. *Cf. Alpha, Inc. v. Leavitt*, 460 F.3d 1, 5–6 (D.C. Cir. 2006).

- b. The government's explanation for the ORR Document Policy runs counter to the evidence before the agency.

The government points to the December 2022 Report from the U.S. Senate Committee on Homeland Security and Governmental Affairs, to justify the ORR Document Policy. The December 2022 Senate Report pointed to (1) the inadequate treatment of UACs in federal care and (2) the insufficient safeguards to ensure that they are not trafficked or abused after their release. *Opp.* pp. 5-6. Significantly, the Committee specifically cited a lack of background checks of sponsors not to issues with verifying foreign identification documents. It recommended that if a sponsor or member of his/her household refuses to comply with a background check, consideration of his/her application should end. *Id.* Though not cited by the government, in 2024, the HHS Office of Inspector General found widespread failures in ORR's completion of case files and follow-through during the sponsor vetting process. *See generally*, Off. Of Inspector Gen., Dep't of Health and Hum. Servs., OEI-07-21-00250, Gaps in Sponsor Screening and Follow-up

Raise Safety Concerns for Unaccompanied Children (2024). Again, the report did not point to any issues with foreign identification documents. Therefore, the evidence that purportedly led to the ORR Document Policy has nothing to do with foreign identification documents.⁴

Not only does the evidence before the agency not support the ORR Document Policy, but the need for U.S. issued identification documents is also irrational and unsupported by agency evidence. Anyone who has travelled internationally has seen passengers present a foreign passport for entry to the United States – it happens every day, thousands of times. This is because the government is in fact able to verify a foreign passport's validity. In addition, as previously stated, the federal government also routinely accepts foreign government issued documents to prove a person's identity.⁵ For example, if sponsors apply for temporary protected status, non-immigrant visas, permanent residency, asylum, or individual taxpayer identification numbers the government would expect and accept the very foreign identification documents it now refuses to accept in the context of qualifying sponsors for undocumented minors.

The government cannot claim that foreign identification documents are difficult to verify in the context of qualifying sponsors for detained unaccompanied children under the TVPRA, but easy to verify in the context of non-immigrant visas, permanent residency, asylum, individual

⁴ The government also mentioned a 2023 grand jury investigation that similarly did not mention foreign identification documents.

⁵ See 8 C.F.R. § 244.9 (in applying for temporary protected status, an alien must supply "[e]vidence of identity," which is "[a]ny national identity document from the alien's country of origin bearing photo and/or fingerprint"); 22 C.F.R. § 41.104 (in applying for nonimmigrant visa, the alien must present a foreign passport); 8 C.F.R. § 208.3(a)(1) (alien applying for asylum may submit foreign passport); 26 C.F.R. § 301.6109-1(a)(3)(iii) (alien applying for individual taxpayer identification number must submit documentation establishing "identity" and connection to foreign government); <https://www.uscis.gov/forms/filing-guidance/checklist-of-required-initial-evidence-for-form-i-485-for-informational-purposes-only> (alien applying for permanent residency must supply foreign-origin documents).

taxpayer identification numbers, or the admission of foreigners into our country. The policies are thus necessarily arbitrary and capricious.

ORR had a longstanding policy of accepting government-issued identification from foreign governments and ORR has mechanisms to verify the validity of the foreign documentation with foreign embassies and consulates and to conduct further background investigations if there are concerns in a particular case. Preamble to Foundational Rule, 89 Fed. Reg. at 34445.

Under the ORR Document Policy, ORR has discretion to waive the US-Identification requirement, further indicating that the government can verify such identification documents. Nonetheless, ORR only allows waivers for parents, and only if the waiver is supported by a “clear justification” – a term the policy does not define. Upon information and belief, ORR has granted few if any waivers under its new policy.

The government has offered no explanation for why ORR can no longer verify the identity of sponsors, household members, and backup caregivers through documents issued by foreign governments, much less a detailed justification. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). ORR’s purported need for U.S. issued identification to establish identity is further undermined by its new universal fingerprinting and DNA testing requirements, which was used to identify E.F.E.L.’s brother, a less burdensome alternative, which also serve to establish identity.

c. The ORR Document Policy is irrational.

For the same reasons set forth in Section V(A)(1)(a), *supra*, which is incorporated by

reference herein, the ORR Document Policy is so irrational that it cannot be ascribed to agency expertise. ORR drastically changed its proof of identification and proof of income requirements without any explanation, without waiting to lawfully update the FRA, and without any consideration for the reliance interests of sponsors and unaccompanied children, the impact on children's length of detention, or less burdensome alternatives to verify sponsor identity and proof of income. These changes are arbitrary and capricious and violate E.F.E.L.'s substantive due process rights; therefore, this Court should hold these changes unlawful and order the release of E.F.E.L. forthwith.

Contrary to the government's argument, the ORR Document Policy has no connection to the TVPRA's mandate, and it is not rationally related to a legitimate government interest. The government argues that the ORR Document Policy was enacted to prevent fraud, but none of the evidence cited supports a blanket ban on all foreign identification documents. Nor does Section 87001 of the OBBBA require the list of things the government alleges on page 10 of their opposition. The ORR Document Policy is intended to obstruct the release of children who can otherwise be released to the custody of a family member who can provide the "least restrictive setting that is in the best interest of the child" as required by the TVPRA.

Congress removed the care of unaccompanied children from the former Immigration and Naturalization Service, a law enforcement agency, to HHS. This was a deliberate choice by Congress to put the care of children in the hands of a non-enforcement agency like ORR, with a mandate to make decisions in the children's best interests. 6 U.S.C. §§ 279(a), (b)(1)(B); 8 U.S.C. § 1232(c)(2)(A). Congress recognized that a child's welfare should not be in the hands of a law

enforcement agency. It tasked ORR with safeguarding the welfare of children, most of whom have been victims of traffickers. Recognizing how harmful detention and isolation from their family is to children, Congress directed ORR to promptly place the children in the least restrictive setting that was in the best interest of the child, and it further directed ORR to do so without unnecessary delay.

In carrying out its statutory mandate, ORR assured sponsors—through explicit language on its FRA forms and in its policies and regulations—that the extensive personal information they and their household members provide to ORR would be used only to determine their ability to care for the child, **not for immigration enforcement purposes**. These policies reflect a well-established consensus that it is in children's best interests to grow up with family rather than confined in an institution. The new ORR Document Policy bears no relation to this statutory mandate, the suitability of a sponsor or the welfare of a child.

The record makes clear that the government's reason for enacting the new policy is pretextual. The government seeks only to undermine the TVPRA by transforming the ORR from a program meant to foster child safety and welfare to a program that prioritizes enforcement. In practice ORR is unlawfully detaining minors and isolating them from their families to coerce minors into waiving their rights and facilitating their removal from the United States and the removal of their sponsors.⁶

⁶ See Advocates Take Legal Action to Block Trump Administration's Move to Terminate 40 Year Protections for Unaccompanied Immigrant Children - NILC.

Undocumented minors are being removed from their communities, isolated from their families, placed in facilities that are not the least restrictive setting in the best interest of children and effectively coerced into agreeing to removal. Moreover, beginning in March 2025, ORR began inviting Immigration Enforcement Agents into sponsor interviews to intimidate potential sponsors and coerce them into desisting in their applications. For sponsors who lack US-based identification documents (and are otherwise undocumented), such as E.F.E.L.'s brother, the specter of immigration authorities at an interview is a major deterrence to those sponsors who can provide the best setting for the child. These goals are plainly unlawful and a blatant violation of the TVPRA, which requires ORR to act in the best interest of the child not to engage in immigration enforcement. Even the appearance of coordination between ORR and immigration-enforcement personnel intimidates undocumented but qualified sponsors into not sponsoring loved ones, contrary to the TVPRA's stated and sole goal of ensuring the children's best interest.

Also beginning in March 2025, the government implemented a new rule, limiting the way sponsors can prove their income. ORR now requires sponsors to supply a prior year's tax return, 60 days of continuous paystubs, or a letter from their employer. Coupled with the US-based identification requirement, these requirements represent an insurmountable obstacle for sponsors that do not have immigration status and a bar to minor reunification with qualified sponsors.

The new ORR policies have resulted in longer detentions for minors and less reunifications with relative-sponsors – precisely the opposite of the intent of the TVPRA. Between October 2025 and February 2026, the length of the detention for the over 2300 minors

in ORR custody increased from 166 to 195 days.⁷ Significantly, only about **5% or 119 of the 2348 minors** in detention in February 2026 were released to sponsors; **2,229** remained detained.⁸ ORR is blatantly violating its mandate.

Courts have found that family separation and prolonged detention harm children. *See, e.g., Jacinto-Castanon de Nolasco*, 319 F. Supp. 3d at 502 (determining that family “[s]eparation irreparably harms plaintiffs every minute it persists”); *Andreu v. Ashcroft*, 253 F.3d 477, 484 (9th Cir. 2001) (*en banc*).

The government has articulated no justifiable reason for its new policies. The record makes clear that they were enacted solely to obstruct the release of unaccompanied minors and facilitate immigration enforcement. Such policy is in direct conflict with the mandate of the TVPRA, which directs ORR to “promptly” release E.F.E.L. from its custody to the “**least restrictive setting that is in the best interest of [E.F.E.L.]**” 8 U.S.C. § 1232(c)(2) (Emphasis added). ORR has already determined that E.F.E.L.’s brother can supply that setting. The government’s policy preventing E.F.E.L.’s release to his brother’s custody is in direct conflict with the TVPRA; therefore, it is unlawful.

B. The ORR Document Policy violates E.F.E.L.’s right to procedural due process.

Under *Mathews v. Eldridge*, the government violated E.F.E.L.’s due process rights when it re-arrested E.F.E.L., infringing his right to freedom, and re-detained him after having previously

⁷ See Office of Refugee Resettlement, Data, available at https://acf.gov/orr/about/ucs/facts-and-data#book_content_1 (last accessed March 19, 2026).

⁸ See Office of Refugee Resettlement, Data, available at https://acf.gov/orr/about/ucs/facts-and-data#book_content_9 (last accessed March 19, 2026).

released him upon finding that his brother could provide the least restrictive environment in E.F.E.L.'s best interest and that E.F.E.L. presented no risk of danger or flight.

The government also failed to follow fair procedures in enacting and promulgating the ORR Document Policy. It was promulgated in violation of the APA, TVPRA and its regulations. The government also did not consider the impact the ORR Document Policy would have on E.F.E.L. or his sponsor, nor did the government consider their reliance on the prior policy. Significantly, the government also did not consider less burdensome alternatives and applied the policy retroactively, all of which resulted in E.F.E.L.'s continued detention.

C. The ORR Document Policy violates E.F.E.L.'s right to equal protection.

The government completely ignores E.F.E.L.'s claim that the ORR Document Policy violates the equal protection guarantee of the Fifth Amendment. As established, there is no rational basis for treating undocumented sponsors differently from documented sponsors. The different treatment is irrational because the government has the capacity to identify undocumented sponsors through foreign identification documents such as passports as well as it can identify them through U.S. issued identification documents. *See* Section V(A)(1)(b), *supra*, which is incorporated by reference herein.

Conclusion

Because ORR has already determined that E.F.E.L.'s brother can provide the least restrictive setting that is in E.F.E.L.'s best interest, and released E.F.E.L., the TVPRA directs that E.F.E.L. be released into his brother's custody. His continued detention violates E.F.E.L.'s Fifth Amendment rights. But even if ORR can demand that E.F.E.L.'s brother re-submit an FRA, it is

enjoined from demanding that he provide U.S. issued identification. Moreover, application of the ORR Document Policy would be impermissibly retroactive and result in E.F.E.L. being denied the setting that is in his best interest. The ORR Document Policy has no relation to its statutory mandate under the TVPRA to ensure unaccompanied children are placed in the least restrictive setting that is in their best interest. On the contrary, it renders TVPRA's directive completely ineffective. Requiring US issued identification documents significantly impacts children and their potential sponsors as it necessarily results on a denial of sponsorship based solely on immigration status. In practice the government is using the ORR policies as an immigration enforcement tool that has transformed the ORR from a program to foster child welfare into a program to foster the removal of undocumented children and sponsors. This goal is unlawful. ORR's function is to ensure the welfare of children; not to remove them. E.F.E.L. is the victim of this unlawful enforcement effort, which is depriving him of his Fifth Amendment rights, and he respectfully requests this court to order his immediate release.

Respectfully submitted,

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