

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

E.F.E.L., a minor,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 26 C 2507
	)	
MARKWAYNE MULLIN, ¹ Secretary of	)	Judge Coleman
Homeland Security <i>et al.</i> ,	)	
	)	
Respondents.	)	

MOTION TO RECONSIDER

Respondents, by their attorney, Andrew S. Boutros, United States Attorney for the Northern District of Illinois, respectfully move for reconsideration pursuant to Federal Rule of Civil Procedure 59(e) regarding the court's judgment, dated May 18, 2026, against the respondents in this matter. *See* Dkt. 30 (judgment); *see also* Dkt. 27 (opinion and order).

This is a habeas case where petitioner E.F.E.L., a 15-year-old citizen of Guatemala, sought immediate release from government custody so that he could be placed into the custody of his brother, *see generally* Dkt. 1 ("Pet."), who did not have any sponsorship application pending at that time. *See* Dkt. 16-1, Declaration of Toby Biswas ("Biswas Decl.") at ¶¶ 19–20. Petitioner was first placed into the custody of the Office of Refugee Resettlement ("ORR") on January 24, 2025, but was released to his brother (as a "Category 2" sponsor) on March 2, 2025, after his brother submitted a sponsorship application reviewed and approved by ORR. *See* Pet. ¶ 18; Biswas Decl. ¶ 18. On December 3, 2025, however, the petitioner was detained by the Tennessee Highway Patrol and subsequently placed into an ORR facility, at which time ORR reached out to

¹ Markwayne Mullin is automatically substituted for his predecessor, Kristi L. Noem, as the Secretary of Homeland Security, pursuant to Fed. R. Civ. P. 25(d).

petitioner's past sponsor to determine the possibility of release to that same sponsor's custody. *See Biswas Decl.* ¶ 19. Yet petitioner's brother failed to complete another sponsorship application and, in fact, withdrew himself from sponsorship consideration on March 6, 2026. *Id.* at ¶ 20. With no sponsorship application before ORR, ORR believed it was bound not to release the petitioner. On April 17, 2026, however, this court ordered petitioner's release to his brother's custody. Dkt. 27. But that decision includes mistakes of law,² including failing to distinguish the roles of the United States Department of Homeland Security ("DHS") from ORR, which is a separate agency within the United States Department of Health and Human Services ("HHS"). Moreover, the court's opinion made a determination outside the adversarial issues presented in petitioner's habeas petition by nullifying ORR's policy requiring *all* potential sponsors of unaccompanied alien children ("UACs") to submit a sponsorship application. *See id.* at 7–9. Accordingly, respondents' motion for reconsideration is appropriate. *See, e.g., Bank of Waunakee v. Rochester Cheese Sales, Inc.*, 906 F.2d 1185, 1191 (7th Cir. 1990) (describing instances where a motion for reconsideration may be valuable, such as "where the Court has . . . made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension.").

Argument

I. The Court's Order Fails to Distinguish ORR's Role and Statutory Obligations As a Caretaker From Those of DHS.

To start, the court's decision fails to adequately separate its analysis of petitioner's initial detention by immigration authorities in December 2025 from the issue of the petitioner's custody after his transfer to ORR and, in so doing, misunderstands ORR's statutory duty. When a federal

² For example, the court mistakenly states that "federal law requires that [federal] agency to transfer custody of the minor to ORR within 7 hours." Dkt. 27 at 2 (citing 8 U.S.C. § 1232(b)).

agency takes custody of a UAC, federal law requires that agency to transfer custody of the UAC to ORR within 72 hours, except in exceptional circumstances. 8 U.S.C. § 1232(b). But ORR has no role in the initial detention of UACs. Rather, it has a statutory obligation to coordinate and implement the care of UACs *after they come into federal custody*. 6 U.S.C. § 279(b)(1).

By way of review, and for any UAC in HHS's custody, "ORR must balance two competing priorities." *Diego N. v. U.S. Dep't of Health & Hum. Servs.*, No. 26-cv-577, 2026 WL 1179706, at *2 (D.D.C. Apr. 30, 2026). On the one hand, Congress "obligated ORR to 'mak[e] placement determinations for all [UACs]' in its custody, . . . and to ensure [they] 'are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity[.]'" *Id.* (quoting 6 U.S.C. §§ 279(b)(1)(C), 279(b)(2)(A)(ii)). On the other hand, "Congress also requires ORR to 'promptly' place those children 'in the least restrictive setting that is in the best interest of the child.'" *Id.* (quoting 8 U.S.C. § 1232(c)(2)(A)). With these two priorities in mind, ORR's statutory caretaking obligation for UACs is not altered by any one court's view of the reasonableness of a UAC's apprehension by a separate law-enforcement agency. And federal law states unequivocally that a UAC "may not be placed with a person or entity unless the Secretary of Health and Human Services makes a determination that the proposed custodian is capable of providing for the child's physical and mental well-being[.]" 8 U.S.C. § 1232(c)(3)(A).

Rather than acknowledging ORR's statutory obligation as a caretaker, however, this court characterized ORR's custody over the petitioner as civil "detention." Dkt. 27 at 4 (discussing how "ORR determined that Petitioner posed neither a danger nor a flight risk and should not be detained," when those issues are irrelevant to a potential UAC sponsor's suitability as a caretaker). Unlike adult detainees in the custody of other agencies, ORR is prohibited by statute from simply

releasing children in its care on their own recognizance, or to just any willing sponsor. *See* Dkt. 27 at 5 (citing 6 U.S.C. § 279(b)(2)(B)). And a prior approval of a past sponsor’s application does not create a mandatory, preclusive effect on ORR where, as here, the law affirmatively changed in between January and December 2025 with the passage of the One Big Beautiful Bill Act of 2025, Pub. L. No. 119-21, title VIII, subtitle H, section 87001(c)(1) (July 4, 2025) (defining “potential sponsor” as “an individual or entity who applies for the custody of an unaccompanied alien child”); *see also* 8 U.S.C. § 1232(c)(3) (describing safety and suitability assessments). That statutory change was never acknowledged.

Furthermore, the court’s order erroneously states that the agency’s Foundational Rule “requires a potential sponsor to present an identity document issued by the U.S., rather than foreign government.” Dkt. 27 at 4. To the contrary, ORR’s UAC Bureau Policy Guide provides that a sponsor’s proof of identity *can be* satisfied by certain foreign government issued documents, including a foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa, or a foreign passport with Form I-94 or Form I-94A with Arrival-Departure Record and containing an endorsement to work, or a driver’s license issued by a Canadian government authority. *See* UAC Policy Guide, Section 2.2.4, *available at* <https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2#2.2.4> (last accessed June 15, 2026).

In sum, respondents maintain that this court’s analysis within its opinion and order was flawed and included multiple mistakes of law and fact. Most seriously, the court confused the separate statutory functions and responsibilities between DHS and ORR vis-à-vis UACs within the latter’s custody.

II. The Court's Holding About ORR's Sponsorship Application Policy Is Outside the Adversarial Issues Presented In Petitioner's Habeas Claim.

Another problem with the court's opinion involved the party presentation principle. *See, e.g., Margolin v. Nat'l Ass'n of Immigr. Judges*, 608 U.S. —, 146 S. Ct. 1285, 1288 (2026) (per curiam). This principle is implicated here because the case brought by petitioner was a habeas challenge to his continued custody by ORR, not a claim under the Administrative Procedure Act ("APA") challenging ORR's policy requiring all potential UAC sponsors to complete and submit a sponsorship application. Put another way, this case did *not* involve a denial of anyone's sponsorship application for E.F.E.L. (because the petitioner's brother withdrew that application) that implicated a policy over what materials would be sufficient for a sponsorship application. Instead, this case is a habeas "challenge [to] the propriety of [a petitioner's] confinement" due to ORR's failure to release him to his prior sponsor, which "is a core habeas concern." *Diego N.*, 2026 WL 1179706, at *9. Nevertheless, this court gravitated to the policy issue that concerned what a third party was not interested in doing to conclude that ORR incorrectly interpreted the Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA") by requiring all sponsors to submit a sponsorship application "because there is absolutely nothing in the TVPRA that requires ORR to conduct the same evaluation a second time for the same sponsor." Dkt. 27 at 8 (emphasis omitted). Essentially, this court went out of its way to rule on agency policy and reviewed that policy as if this case involved an APA challenge to the same by a denied sponsor.

This subtle shift over what issue is under review (in this case, either present confinement of the petitioner or an agency policy that may have dissuaded a third party) matters because a habeas action is supposed to challenge confinement. Habeas actions are not opportunities for a backdoor invalidation of an agency's interpretive rule. *See United States v. Texas*, 599 U.S. 670, 699 (2023) (Gorsuch, J., concurring) ("[N]o one thinks a court adjudicating a declaratory action

or a habeas petition ‘vacates’ agency action along the way.”). The APA, however, “requires a court ‘to hold unlawful and set aside agency action’ that is ‘not in accordance with law’ or ‘in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.’” *Diego N.*, 2026 WL 1179706, at *9 (quoting 5 U.S.C. §§ 706(2)(A), (C)). Accordingly, the evaluation of ORR’s interpretive rule does not turn on “whether the TVPRA ‘requires’ the Government to follow the course it has chosen. Rather, to prevail [in setting aside agency action], plaintiffs must show that ORR’s course of action *contravenes* the TVPRA’s requirements.” *Id.* (emphasis added). But the petitioner in this case never made such a showing.

While ORR previously determined in January 2025 that the least restrictive setting in the best interest of the petitioner was with his brother, ORR’s refusal to automatically release petitioner to a previously approved sponsor (especially where that same person is no longer even *willing* to submit a sponsorship application) is “not ‘systematically disregarding’ its prior determinations regarding specific sponsors. . . . Rather, by requiring [submission of] up-to-date information, ORR is attempting to ensure that transferring custody to those sponsors now . . . would serve ‘the best interest of the child’ *in the present.*” *Id.* at *11 (emphasis added) (quoting 8 U.S.C. § 1232(c)(2)(A)). While ORR’s prior approval of a sponsor is relevant, it does not and cannot fully answer whether “the proposed custodian *is* capable of providing for the child’s physical and mental well-being.” 8 U.S.C. § 1232(c)(3)(A) (emphasis of the present tense added). Accordingly, to fulfill its statutory obligations toward UACs, ORR must assess “the nature and extent of the potential sponsor’s previous and *current* relationship with the unaccompanied child.” 45 C.F.R. § 410.1202(d) (emphasis added). ORR’s requirement for, and review of, sponsor applications prior to the release of all UACs is entirely consistent with, and does not contravene, the TVPRA. Accordingly, any determination invalidating ORR’s policy requiring *all* potential

UAC sponsors to submit a sponsorship application was outside the adversarial issues of petitioner's habeas claim.

Conclusion

Based on the foregoing, the court should vacate both its judgment, Dkt. 30, and its opinion and order, Dkt. 27.

Respectfully submitted,

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