

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

J.R.C., a minor child,

Petitioner,

v.

ANGIE SALAZAR, in her official capacity as Acting Director
of the Office of Refugee Resettlement; CRISTINA
MARQUEZ, in her official capacity as Facility Director of the
El Paso ORR Upbring Facility; MARKWAYNE MULLIN,
in his official capacity as U.S. Secretary of Homeland Security;
TODD BLANCHE, in his official capacity as Acting Attorney
General of the U.S.; DAREN K. MARGOLIN, in his official
capacity as Director of the Executive Office for Immigration
Review; U.S. DEPARTMENT OF HEALTH AND HUMAN
SERVICES; U.S. DEPARTMENT OF HOMELAND
SECURITY; U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT; U.S. DEPARTMENT OF JUSTICE; U.S.
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;
U.S. OFFICE OF REFUGEE RESETTLEMENT,

Respondents.

EP-26-cv-1469-KC

PETITIONER J.R.C.'S REPLY IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

This Court's Show Cause Order identified the central question in this case: whether this entire process is unnecessary and erroneous. ECF No. 5 at 2. It is. J.R.C. should never have been classified as an unaccompanied child ("UAC") in the first place. Rather than defend J.R.C.'s detention as lawful, Respondents ask this Court to wait and keep an 11-year-old boy away from his father and stepmother as the government attempts to unwind a crisis of its own making. The Government's position rests on a circular premise of its own making. ICE separated J.R.C. from the adults caring for him after taking his father into custody, then classified him as "unaccompanied" because of that separation and now argues that his continued detention is justified because he is a UAC. It is not. This is not a case involving a genuinely unaccompanied child awaiting placement. It is a case involving an eleven-year-old boy who remains separated from his family because of a designation that resulted from the government's own unlawful separation and the prolonged detention, reunification procedures, and requests for additional vetting that now follow flow directly from initial error. Because the process itself is unnecessary and erroneous, the Court should order J.R.C.'s immediate release, or at minimum his release to his stepmother pending completion of any remaining reunification procedures.

II. ARGUMENT

A. Respondents Admit They Violated ICE Directive 11064.4 by Improperly Designating J.R.C. as an Unaccompanied Child ("UAC") After Unlawfully Separating Him From His Father and Stepmother, and the UAC Framework Therefore Does Not Apply.

Respondents cannot rely on the UAC provisions of 8 U.S.C. § 1232(c)(1), (c)(3)(A)) because section 1232(c)(1) applies only after a child is properly determined to be an unaccompanied alien child. A child who was living with, traveling with, or detained with a parent or other available caregiver does not become a UAC merely because the Government chooses to separate the family.

1. The UAC designation is erroneous and does not apply to J.R.C. because a parent or guardian was present at the moment of his apprehension.

To begin, J.R.C. does not satisfy the statutory definition of a UAC under 6 U.S.C. § 279(g)(2), which defines an "unaccompanied alien child" as a child with no lawful immigration status, who has not attained 18 years of age, and with respect to whom there is no parent or legal guardian in the United States, *or no parent or legal guardian in the United States available to provide care and physical custody* (emphasis added). First, J.R.C. was not ever unaccompanied. At the time of his apprehension, J.R.C. was accompanied by and residing with his father and stepmother, who was available and willing to continue to provide care and physical custody after J.R.C.'s father was apprehended. J.R.C.'s stepmother—a member of his household, a primary caregiver, and the adult who dropped him off and picked him up from school, cared for him daily, and was physically present at the scene of his arrest—is a parent figure in the United States who was available to provide care and physical custody. Pet. ¶¶ 27–29. She was standing at the family's front door. She ran out with J.R.C.'s infant brother in her arms. She offered TPS documentation to the agents. She was present, available and actively providing J.R.C. care and physical custody at the time of the arrest.

In short, J.R.C. did not become "unaccompanied" because he lacked a parent or caregiver in the United States capable of providing care and physical custody. He became "unaccompanied" only because ICE chose to remove him from the care of the adults who were already providing it. The plain language of § 279(g)(2) does not permit the government to manufacture a child's unaccompanied status by separating him from his available caregivers and then invoke that status as a basis for continued detention. To hold otherwise would permit ICE to convert virtually any accompanied child into a UAC simply by separating the child from a parent at the time of arrest. Because J.R.C. was residing with and cared for by his father and stepmother at the time of his

apprehension, and because his stepmother remained present, available, and willing to provide care and physical custody, he never satisfied the statutory definition of an unaccompanied alien child and the UAC framework is erroneous and cannot justify his continued detention.

2. The Government Cannot Invoke the Unaccompanied Child Framework When Its Own Unlawful Conduct Created the Separation.

The family separation litigation of 2018 established, and courts have since reaffirmed, a principle that directly relates to J.R.C.'s case: the Government cannot use its own unlawful separation of a child from an available caregiver as the predicate for invoking the elaborate UAC custody apparatus. *Ms. L. v. U.S. ICE*, 310 F. Supp. 3d 1133 (S.D. Cal. 2018). In *Ms. L.*, the government separated children from their parents during the "zero tolerance" prosecution policy, then designated those children as "unaccompanied" and placed them in ORR custody—even though they had arrived with a parent and been physically torn from that parent's arms. The court found that this violated substantive due process and ordered reunification. *Id.* at 1149-50. The critical holding was based on the premise that a child is not "unaccompanied" in any legally cognizable sense when the "unaccompanied" status was manufactured by the government through its own separation of the child from an available caregiver. Furthermore, when the government has itself created the separation, it cannot invoke the full UAC sponsor-vetting framework that was designed for children who arrived in the United States without any caregiver at all. That principle is not limited to border separations, and the same logic applies that the government may not benefit from its own wrong. Here, J.R.C. was accompanied. The government separated him. The government now relies on the separation it created to subject him to a mandatory vetting regime designed for genuinely unaccompanied children. The court in *Ms. L.* rejected that logic. This Court should as well.

3. *J.R.C. was taken into government custody in violation of Directive: 11064.4 Detention and Removal of Alien Parents and Legal Guardians of Minor Children, where he should have been left in the care of his stepmother instead and is cognizable as an Accardi violation.*

ICE Directive 11064.4 governs precisely what ICE must do when arresting a parent in the presence of a minor child. It commands, without qualification, that "ICE personnel should not, under any circumstances, take custody of or transport the minor child(ren)." It further requires that ICE "remain on the scene with the Covered Individual until the designated third party, or the local child welfare authority or law enforcement agency assumes physical custody of the minor child(ren)." *Id.* There is no exception for cases involving a parent's criminal history. There is no exception for an alleged fugitive operation. The Directive says "under any circumstances." ICE agents violated their own written directive when they physically picked up an eleven-year-old boy standing in front of his home after it seized his dad and placed him in a vehicle next to his handcuffed father while in the care and supervision of his stepmother.

Rather than attempt to justify this blatant violation, Respondents' response pivots to the father's alleged criminal history and to the logistics of sponsor vetting. ECF No. 3 at 1–2 ("ICE records show that J.R.C.'s father has a criminal history, including a 2024 arrest for assault family violence (disposition unknown) . . . ") Although J.R.C.'s father, Jesus Reyes, was arrested in 2024 for a misdemeanor assault family violence, the case was never prosecuted and should not be considered for any reason, including as a basis to attempt to further justify a family separation. *See Exhibit A, Register of Actions.* Moreover, the Government's assertion that additional ORR vetting will soon resolve this case is particularly troubling given widespread reports that ORR's current sponsor-screening process has produced months-long delays in reunification even where parents

or previously approved sponsors are readily available.¹ Recent federal litigation alleges that children are spending nearly 200 days in ORR custody on average because of expanded vetting requirements and bureaucratic backlogs, demonstrating that further administrative processing is not a meaningful substitute for judicial relief where a child is being unlawfully detained. *Id*

It is also notable that neither justification is responsive to the clear violation of ICE Directive 11064.4. The Directive governs what ICE must do at the moment of a parent's arrest. Whatever the father's criminal history, it does not give ICE license to physically seize a child whose stepmother is standing at the scene offering to take custody. Under Directive 11064.4, ICE was required to leave J.R.C. with his stepmother. It did not. That violation is the proximate cause of his current detention. Had agents complied by remaining on scene until J.R.C.'s stepmother assumed physical custody, J.R.C. would never have entered government custody at all. He would not be in ORR. There would be no sponsor application to vet. The UAC framework would never have been triggered, and should never have been triggered.

Courts applying *Accardi* do not permit agencies to disclaim the binding effect of their own directives. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.”)

¹Jackie Llanos, *Immigrant Kids Face Longer Periods in HHS Custody During Trump's Second Term*, News of the United States, <https://www.notus.org/immigration/lawsuit-hhs-office-refugee-resettlement-minor-sponsor-screening-time>

Accardi exists precisely for this situation: where an agency violates its own binding procedures, it cannot then invoke the downstream consequences of that violation to justify continued detention. The appropriate remedy under *Accardi* is to restore J.R.C. to the position he would have occupied absent the violation in his stepmother's care, never designated as an unaccompanied child, and free.

B. The TPS Statute Independently Requires J.R.C.'s Release

The Government's response does not address the TPS claim at all. That silence is telling. The statute is unambiguous: "[a]n alien provided temporary protected status under this section shall not be detained by the Attorney General on the basis of the alien's immigration status in the United States." 8 U.S.C. § 1254a(d)(4). J.R.C. holds valid TPS. The NTPSA December 10 Order, which has not been stayed, declared unlawful the government's purported vacatur of Venezuelan TPS and has preclusive effect as to J.R.C.'s status as a member of the National TPS Alliance. Pet. ¶¶ 55–62. The government's failure to contest this claim is, at minimum, a concession that it lacks a response on the merits. The Court should grant the writ on this ground alone.

C. Respondent's Concession on Due Process Warrants Immediate Relief

The Government's brief acknowledges that the facts of this case are "unlikely to result in a decision contrary to this Court's prior decisions on due process." ECF No. 3 at 3. That acknowledgment substantially narrows the dispute before the Court and confirms that Respondents do not meaningfully distinguish the due process principles applied in this Court's prior decisions.

The courts in this District have repeatedly held that re-detention of noncitizens previously released on recognizance, without a pre-deprivation hearing, violates procedural due process. *See, e.g., Mendoza v. Noem*, No. 5:26-CV-0728-JKP (W.D. Tex. Feb. 26, 2026); *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *11 (W.D. Tex. Oct. 2, 2025); *Hernandez-*

Fernandez v. Lyons, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *10 (W.D. Tex. Oct. 21, 2025). J.R.C. was released on his own recognizance in 2023. He received no pre-deprivation hearing before his re-arrest in April 2026. He has received no post-deprivation bond hearing. Nothing the government's response says changes those facts.

The proper remedy for a due process violation is not to pause and wait for an administrative process to run its course. It is release. *Mendoza*, No. 5:26-CV-0728-JKP at p. 15 ("[T]he significant violation of Petitioner's due process rights and other prudential concerns weigh in favor of ordering Petitioner's immediate release."). That J.R.C. is a child does not diminish his liberty interest, it amplifies the urgency of relief. *In re Gault*, 387 U.S. 1, 13 (1967).

D. CONCLUSION

J.R.C. has been separated from his family for almost five weeks. That separation was unlawfully engineered by ICE agents who violated their own directive. The Government's response concedes it cannot defend his continued detention on due process grounds. The TPS claim is uncontested. This Court should order the immediate release of J.R.C. to his stepmother and to his father, who has a pending companion petition for habeas corpus with this Court (*Reyes Hermes v. Doe et al*, 3-26-cv-014990KC).

E. PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that the Court grant the following relief:

- A. Order the immediate release of J.R.C. to his stepmother/sponsor; or in the alternative,
- B. Order Respondents to complete the suitability determination for J.R.C.'s stepmother within 72 hours and release J.R.C. to her upon completion; and
- C. Award Petitioner reasonable costs and attorneys' fees; and
- D. Grant any other relief that this Court deems just and proper.

Dated: June 5, 2026

/s/ Kristin Etter
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CERTIFICATE OF SERVICE

Under penalties as provided by law, the undersigned certifies that true and correct copies of this Petitioner's Petition for a Writ of Habeas Corpus will be served upon all counsel of record via email on June 5, 2026.

Date: June 5, 2026

/s/ Kristin Etter
Kristin Etter