

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

S.R.U.,

Petitioner,

v.

ROBERT F. KENNEDY, JR. *et al.*

Respondents.

Case No. 1:2026-cv-04610

**PETITIONER'S REPLY IN SUPPORT OF PETITION
FOR WRIT OF HABEAS CORPUS**

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INTRODUCTION

Petitioner S.R.U. is a 16-year old boy who has been detained for nearly six months while Respondents decide whether to release him to his family. His family's suitability is not the issue: Respondents concede that they have thoroughly vetted the proposed sponsor—his adult sister—and his father, who lives with her, and have identified no reason to question their ability to care for him. Instead, Respondents say they cannot release Petitioner unless the Internal Revenue Service issues his father an Individual Taxpayer Identification Number (ITIN) under their newly adopted policy requiring sponsors and adult household members to provide a Social Security Number or an ITIN before they can release minors like Petitioner. But Respondents already have the sister's ITIN, and the father has already provided the only available evidence to show he has applied for an ITIN. Still, Respondents claim that is not enough, even though they admit they could waive the ITIN requirement if the father were made the primary sponsor—an admission that shows this so-called policy has little if anything to do with ensuring Petitioner's care.

Accordingly, because Respondents have not shown that this requirement is reasonably related to a suitability assessment—or that proof of a pending ITIN application is inadequate—the Court should hold that Respondents are unnecessarily prolonging Petitioner's detention and order his immediate release.

FACTUAL BACKGROUND

The parties seem to agree on several salient facts. Petitioner is a 16-year-old boy who was taken into custody by Respondents in December 2025 and designated an “unaccompanied child” upon entering the United States. Resp., ECF No. 7 at 2. By next week, he will have spent six months in Respondents' custody. Throughout that time, Respondents have subjected Petitioner's his adult sister (his proposed sponsor) and their father to extensive, and often intrusive, vetting

requirements. *See* Declaration of Toby Biswas (“Biswas Decl.”), ECF No. 8 at ¶¶ 27-42 (describing the months-long process that Petitioner’s sister and father have undergone to prove their suitability). None of it has produced evidence—or even a concern—about their ability to care for Petitioner. ECF No. 7 at 2 (noting that “from December 2025, through present, ORR has taken multiple steps to completing the assessment process for S.R.U.’s sister, including in February 2026 completing a home study with positive results.”). In fact, Respondents’ acknowledge, the “only aspect of [Petitioner’s] sponsorship application that remains outstanding” is a dispute over whether his father can or must provide an Individual Tax Identification Number (“ITIN”), which can only be issued by the Internal Revenue Service (“IRS”). Biswas Decl., ECF No. 8 at ¶ 43.

In other words, all that is keeping Petitioner from his family is a tax number. In Respondents’ view, it is not enough that Petitioner’s father applied for an ITIN over two months ago and already showed Respondents the only evidence available to prove he had in fact applied. ECF No. 1 at ¶ 19. Nor is it enough that the only agency that can issue an ITIN to Petitioner’s father is the IRS, an agency that remains in the Executive Branch’s control. Instead, they insist that nothing short of the actual ITIN will suffice. Resp. Br. at 3.

At the same time, Respondents tacitly acknowledge that an ITIN is not statutorily mandated. Indeed, they claim that if Petitioner’s father were to replace his daughter as Petitioner’s sponsor, they would consider waiving it in accordance with their internal agency guidance. Biswas Decl. at ¶ 44 (“If the father serves as the primary sponsor, ORR could consider waiving the ITIN requirement”); *see also* Resp. Br. ECF 7 at 3, n.5 (claiming Petitioner’s argument that an ITIN is not required “ignores the plain language of the [ORR] *Policy Guide*”) (emphasis added).¹

¹ As Petitioner explained before, *see* Pet’n, ECF No. 1 at ¶¶ 36-41, this guidance has undergone sweeping changes under the current federal administration, with the ITIN policy coming into existence only after Petitioner’s sister initiated her sponsorship application. *See* Pet’n, ECF No. 1, at ¶ 39 (noting the Feb. 27, 2026 update to UC Policy Guide 2.2.4, available at <https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-record->

In the end, Respondents promise that they will finalize the sponsorship process “soon (as soon as it receives the father’s ITIN),” Resp. Br. at 3, and that “ORR anticipates being able to make a release decision within four days of receiving the father’s ITIN.” *Id.* at 3. In other words, absent this Court’s intervention, Petitioner’s liberty and ability to reunify with his family depends entirely on how quickly—or slowly—the IRS issues his father a tax number.

LEGAL ARGUMENT

Respondents’ opposition to releasing Petitioner from their custody is indefensible and unlawful. They do not claim that Petitioner’s sister or father are unsuitable caretakers. Nor do Respondents explain what a tax number would add to their already extensive vetting. Instead, Respondents effectively ask this Court to deny Petitioner his liberty because his father has not yet received a tax number—and they insist their need for it is nonwaivable. The Court should decline that invitation. As explained below, Respondents offer no coherent explanation for why the ITIN is necessary, or how it bears any relation to the sponsor-vetting process. Indeed, they point to no legal requirement—other than their own internal guidance—that conditions Petitioner’s release on receipt of his father’s ITIN. Given the circumstances, the Court should grant the petition and order Petitioner’s release.

A. Respondents Have Violated Petitioner’s Statutory and Due Process Rights By Imposing Unnecessary Procedural Barriers.

Procedural Due Process. Respondents hardly explain how their actions comport with due process, particularly under the standard set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). They do not dispute that under that test, S.R.U. has a fundamental interest in being free from government custody. *See, e.g. Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (“[T]he interest in being free from physical detention” by the state is “the most elemental of liberty interests[.]”); *In re Gault*, 387

posting-and-revision-dates). As is the case here, these changes have led to a marked increase in the average length of time children like S.R.U. spend in Respondents’ custody. *See* Pet’n, ECF No. 1 at ¶ 36.

U.S. 1, 13 (1967) (“neither the Fourteenth Amendment nor the Bill of Rights is for adults alone”). Nor do they deny that he has another liberty interest in family integrity—the constitutionally protected right to avoid “being dislocated from the emotional attachments that derive from the intimacy of daily family association.” *K.W. on behalf of K.A. v. City of New York*, No. 24-3042, - -- F.4th---, 2026 WL 1391967, at *6 (2d Cir. May 19, 2026); *see also Tenenbaum v. Williams*, 193 F.3d 581, 600 (2d Cir. 1999) (observing that a family has, “in general terms, a substantive right under the Due Process Clause to remain together without the coercive interference of the awesome power of the state”). They also do not contest that governmental action that could deprive Petitioner of such weighty interests should be fair so as to avoid erroneous deprivation. Accordingly, all that remains for the Court to decide is whether their interest under the *Mathews v. Eldridge* test is sufficient to justify the process that they have applied in Petitioner’s case.

It is not. Respondents maintain they need Petitioner’s father’s ITIN to ensure that release is in Petitioner’s best interests. Specifically, they claim continued detention is required because “ORR is actively reviewing the sponsor’s application and is nearing the final step in the process” and because they are continuing to complete a sponsor suitability assessment. Resp. Br. ECF 7 at 3. But if Respondents’ interest is Petitioner’s well-being, that interest has already been served: Respondents subjected Petitioner’s sister and father to months of investigation—complete with a home study—and found no basis for concern. *See Biswas Decl.* at ¶¶ 27-42; Resp. Br. ECF 7 at 2 (“from December 2025, through present, ORR has taken multiple steps to completing the assessment process for S.R.U.’s sister, including in February 2026 completing a home study with positive results” (internal citation omitted)). Indeed, nowhere do Respondents explain how a missing tax number casts doubt on their suitability. To the contrary, Respondents readily admit that they would consider waiving the ITIN requirement for Petitioner’s father if he, instead of

Petitioner's sister, became the primary sponsor. Biswas Decl. at ¶ 44.²

Due process requires more than an agency's say-so. When the government confines a person or deprives them of a fundamental liberty interest, it must offer a reasoned justification supported by adequate procedures. *See Lopez v. Sessions*, No. 18 Civ. 4189 (RWS), 2018 WL 2932726, at *10 (S.D.N.Y. June 12, 2018). Here, Respondents offer only (1) a vague insistence that the ITIN is part of the "suitability assessment," Resp. Br. at 4, and (2) a reference to a statutory provision that funds background checks that use SSN/ITIN queries. Biswas Decl. ¶ 17. That kind of unreasoned barrier is precisely what courts have found to raise serious due-process concerns. *See e.g. Lucas R. v. Becerra*, 2022 WL 2177454, at *27 (C.D. Cal. Mar. 11, 2022) ("significant' and 'unexplained delay[s] in responding to a [a proposed sponsor's] unification request' violate due process irrespective of other procedural defects."); *Santos v. Smith*, 260 F. Supp. 3d 598, 613 (W.D. Va. 2017) (finding that ORR placed an improper burden on the parent sponsor to disprove ORR's initial determination and justify reunification); *see also Maldonado v. Lloyd*, No. 18 CIV. 3089 (JFK), 2018 WL 2089348, at *7 (S.D.N.Y. May 4, 2018) ("With respect to the second *Mathews* factor, it is appropriate to review the process that has been provided to Petitioners so far.").

Finally, Respondents argue the "Government has a strong interest in protecting the welfare of UACs, as clearly expressed through the provisions of the TVPRA." Resp. Br. at 3. But even on Respondents' own terms, the ITIN demand is gratuitous. The TVPRA and its regulations require ORR to place children "promptly" in the least restrictive setting and to release them "without unnecessary delay" once ORR assesses sponsor suitability. 8 U.S.C. § 1232(c)(2)(A); 45 C.F.R. § 410.1202(b). The regulations, particularly 8 C.F.R. § 410.1202, identify the checks ORR must

² Respondents already have the primary sponsor's ITIN. Biswas Decl. at ¶ 38.

perform and the measures it may use; they do not make an ITIN a precondition to release. *Id.*

Other courts have rejected materially similar conduct. *See M.A. v. Molina*, No. 4:26-CV-415, 2026 WL 741623, at 6 (N.D. Ohio Mar. 17, 2026) (ordering immediate release and holding that due process was violated where the minor was detained for nearly eight months and the government required an ITIN application despite having previously approved the sponsor without one). This Court should do the same.

Substantive Due Process. Respondents largely dodge Petitioner’s substantive due process claim. They say their conduct here does not “shock the contemporary conscience” because—in their words—ORR is running a release process that is meant to “protect S.R.U.’s wellbeing, not harm it.” Resp. Br. at 2. But calling something “protective” does not make it so.

When the government withholds a child from their family, it must show a particularly compelling interest. *See* Petition, ECF 1, ¶¶ 47–50 (citing *Kia P. v. McIntyre*, 235 F.3d 749, 759 (2d Cir. 2000) (holding Constitution allowed child to be withheld from her mother for only a “short time,” in that case “a day or two,” while government actors determined if her placement with her mother was safe). Here, by their own account, Respondents are keeping a child in government custody, away from his sister and father, because they have chosen to condition his release on another agency’s issuance of a tax number—all on a timetable that neither Petitioner nor his family control. Worse, they claim this is justifiable even though they cannot point to any concern about Petitioner’s family’s capacity to care for him. That is not “protection”; it is delay dressed up as process.

B. Respondents’ actions violate the APA, which can be raised through a habeas petition.

As with Petitioner’s due process claims, Respondents mostly sidestep his claim that the ITIN requirement violates the Administrative Procedure Act. Their primary argument is that an APA claim

cannot be brought in habeas because of the Supreme Court’s decision in *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025). Resp. Br. at 4. But their reliance on *J.G.G.* is inapposite. First, *J.G.G.* only addressed challenges under the Alien Enemies Act—a unique wartime statute with unique judicial review limitations. Second, even if it had any relevance here (and it does not), the Court said “[c]hallenges to removal under the AEA...must be brought in habeas,” *J.G.G.*, 145 S. Ct. at 1005, which of course is precisely what Petitioner has done by filing the present petition. *See Orellana v. Francis*, No. 25-CV-04212 (OEM), 2025 WL 2822640, at *5 (E.D.N.Y. Oct. 3, 2025) (finding APA claim was a “viable action” brought through a habeas petition and rejecting the same argument Respondents advance here).

On the merits of Petitioner’s APA claim, other than to reiterate that the ITIN requirement is consistent with their obligation to ensure “prompt but safe releases” under the governing regulations. Resp. Br. at 4, n. 6. Not so for the reasons already mentioned. *See supra* at 5-6 (explaining that neither the TVPRA nor the regulations condition release on an ITIN). Alternatively, even if an ITIN were reasonably related to the sponsorship process and ensuring suitability, proof of application for an ITIN is sufficient to meet this requirement under a plain reading of ORR’s administrative guidance, which clearly states that an ITIN is not required as a prerequisite for release, but rather can be applied for “during the pendency of their sponsorship application.” *See UC Policy Guide*, Section 2.2.3. The guide goes on to say that “Sponsors, HHMs [household members age 18 and older], and ACGs [adult caregivers] who cannot provide proof of their SSN or ITIN may request a new copy of their SSN card or apply for and *later* provide their ITIN, as appropriate, to complete the *Sponsor Application* and vetting process.” (emphasis added).

Respondents’ own actions indicated that they initially shared this interpretation of the Policy Guide. Specifically, after Petitioner’s father provided a copy of his ITIN application, Respondents stated that this evidence was not sufficient and that it needed IRS-issued proof of the ITIN application. Pet’n, ECF No. 1 at ¶ 19. Petitioner explained that IRS does not issue any proof

of a pending application. Biswas Decl. at ¶ 42.

Now, for the first time, Petitioners maintain that proof of application is insufficient and instead the ITIN itself is needed before Respondents can process a sponsorship application. This shift in interpretation of the rule—midstream in litigation, no less—bears all the signs of arbitrary agency action. See *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1907, 207 L. Ed. 2d 353 (2020) (recognizing post hoc rationalization as impermissible under the APA). And at a minimum, ORR's failure to follow its own guidelines thus violates the *Accardi* doctrine. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (federal agencies and their officials are required to follow their own "existing valid regulations."); see also *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991) (*Accardi* is not "limited to rules attaining the status of formal regulations.").

CONCLUSION

For the foregoing reasons, Petitioner asks the Court to grant his petition and order his immediate release from custody.

Dated: June 10, 2026

Respectfully submitted,

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**Applications for admission forthcoming*

CERTIFICATE OF SERVICE

I, Harold A. Solis, certify that on June 10, 2026, I electronically filed the attached the foregoing document with the Clerk of the Court for the United States District Court for the Southern District of New York using the CM/ECF system. Service will therefore be effected by the CM/ECF system.

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