UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

R.G.M., by his next friend Claudia Marin Chavez,

Petitioner,

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; DAWN SAFFAYEH in her official capacity as President and Chief Executive Officer of HeartShare St. Vincent's Services (HSVS); Markwayne MULLIN, in his official capacity as Secretary of the Department of Homeland Security.

Respondents.

Case No. 1:26-cv-3322 (EK)

FIRST AMENDED VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner R.G.M. is a nine-year-old United States citizen child whom Respondents have unlawfully held in their custody since November 2025, when a relative brought him to the U.S. border. Because R.G.M. acquired U.S. citizenship at birth by operation of law, his detention by the Office of Refugee Resettlement violates both statutory law and the Constitution. For months, his maternal grandmother—a Lawful Permanent Resident—has been trying to secure his release from custody. She has repeatedly informed Respondents that R.G.M.'s mother is a United States citizen, provided his birth certificate as evidence of this, and offered to present further documentation. Although this information should have immediately triggered further investigation, Respondents failed to inquire further and instead have subjected Petitioner to prolonged, unlawful custody. His prolonged detention and separation from family have harmed R.G.M.'s mental health and well-being.

Accordingly, he brings this Petition seeking his immediate release and reunification with his family.

PARTIES

1. Petitioner R.G.M. is a nine-year-old boy who has been designated as an "unaccompanied child" and is in the custody of the Office of Refugee Resettlement ("ORR"). He is detained by one of ORR's subcontractors in Brooklyn, New York. R.G.M. was born in Mexico on [redacted] 2017 to an unwed U.S.-citizen mother who resided in the U.S. continuously until she was approximately 15 years old, such that he acquired U.S. citizenship at birth by operation of law.

2. Claudia Marin Chavez is Petitioner's next friend. Ms. Marin is R.G.M.'s maternal grandmother. She has known him since birth and the two have a close relationship. She is committed to acting in his best interest. If and when R.G.M. is released from his current unlawful detention, he will reside with her.

3. Respondent Robert F. Kennedy Jr. is the Secretary of U.S. Department of Health and Human Services, a cabinet-level department of the United States Government. ORR is a component of HHS. As the Secretary of HHS, Respondent Kennedy is a custodian of Petitioner, with authority to produce and release him. Respondent Kennedy is sued in his official capacity. His address is U.S. Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201.

4. Respondent Angie Salazar is the Acting Director of ORR, the subagency HHS responsible for overseeing the care and custody of unaccompanied minors. ORR is the government entity directly responsible for the detention of Petitioner. As the Acting Director of ORR, Respondent Salazar is a custodian of Petitioner, with authority to produce and release him. Respondent Salazar is sued in her official capacity. Her address is Office of Refugee Resettlement, Administration for Children & Families, 330 C St SW, Room 5123, Washington, DC 20201.

5. Respondent Dawn Saffayeh is the President and Chief Executive Officer of HeartShare St. Vincent's Services (HSVS) which operates the shelter where R.G.M. is being held at the time of this petition. As President and CEO of HSVS, Respondent Saffayeh is a custodian of Petitioner, with authority to produce him. Respondent Saffayeh is sued in her official capacity. On information and belief, her address is 4507 4th Ave, Brooklyn, NY 11220.

6. Respondent Markwayne Mullin is named in his official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, he is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to remove the Petitioner; and as such is a legal custodian of the Petitioner. Respondent Mullin's address is U.S. Department of Homeland Security, 800 K Street N.W. #1000, Washington, District of Columbia 20528.

JURISDICTION AND VENUE

7. The federal district courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

8. This Court has jurisdiction under the U.S. Constitution. U.S. Const. art. I § 9, cl. 2 (the "Suspension Clause").

9. The Court also has jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C, § 1651 (the All Writs Act); 28 U.S.C. § 2241 (habeas corpus); and 5 U.S.C. § 701 (the Administrative Procedure Act).

10. This Court has additional remedial authority under 28 U.S.C. §§ 2201 and 2202 (the Declaratory Judgment Act) and Fed. R. Civ. P. 65 to grant declaratory and injunctive relief. It may

also order interim release during the pendency of this case under *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001).

11. Venue is proper under 28 U.S.C. § 2241(d) because Petitioner is detained in Brooklyn, which is within this district.

FACTUAL BACKGROUND

12. R.G.M. is a nine-year-old boy who was born in [redacted] 2017 in Puebla, Mexico. *See* Exh. A to Austin Decl. (petitioner's birth certificate).

13. R.G.M.'s mother, Karla Gonzalez, was born in Queens, New York in 2001. Exh. B to Austin Decl. (petitioner's mother's birth certificate). She resided in the U.S. continuously until the age of 15, attending New York City schools. *See* Bensignor Decl. (attaching Karla Gonzalez's New York City school records showing her enrollment and attendance from 2006 to 2015). In late 2015, she moved to Mexico with her family, where she gave birth to R.G.M. Ms. Gonzalez was unmarried at the time of R.G.M.'s birth. Because she had lived in the U.S. for over a year prior to his birth, *see infra* at ¶ 24-29, R.G.M. met the requirements to acquire U.S. citizenship at birth by operation of law.

14. R.G.M.'s Mexican birth certificate, which Respondents have had in their possession since shortly after his detention, lists his mother's nationality as a U.S. citizen. It does not list a father—which is consistent with his mother being unwed.

15. R.G.M.'s maternal grandmother Claudia Marin Chavez, who is a Lawful Permanent Resident, cared for him in Mexico during his childhood and the two have a close relationship. When R.G.M. was in Mexico, Ms. Marin spoke with him on the phone daily and she sent money to family in Mexico to provide for his needs and visited him often. R.G.M.'s mother, Karla Gonzalez, resides in Minnesota and has virtually no contact with her son.

16. In or around November 20, 2025, unbeknownst to R.G.M.'s grandmother, a relative brought R.G.M. to the U.S. border. Upon entry into the U.S., R.G.M. was detained and classified as an unaccompanied child and taken into the custody of the Office of Refugee Resettlement ("ORR").

17. Since R.G.M. was detained by ORR, Ms. Marin has sought to obtain his release. She has repeatedly told his ORR case workers and other officials that R.G.M.'s mother is a U.S. citizen. Shortly after he was detained, Ms. Marin provided R.G.M.'s Mexican birth certificate to ORR, which shows that his mother is a U.S. citizen. She also offered to provide ORR with more records regarding R.G.M.'s mother citizenship. But Respondents and their staff told her that R.G.M.'s mother's citizenship was irrelevant, since his mother was not sponsoring him for release, and that there was no reason for Ms. Marin Chavez to obtain or provide further records. At no point has anyone from ORR or a subcontractor of ORR interviewed Ms. Marin Chavez or otherwise indicated that any investigation into R.G.M.'s citizenship is being undertaken or has been undertaken.

18. ORR uses electronic records verification and engages with foreign consulates to verify the authenticity of birth certificates issued abroad. ORR verified the authenticity of R.G.M.'s Mexican birth certificate in December 2025.

19. Only when R.G.M. was appointed a child advocate months into his detention did the advocate for the first time ask R.G.M.'s grandmother to adduce further proof of her daughter's birth in the U.S. and residence in New York throughout her childhood, which R.G.M.'s grandmother promptly did. She obtained R.G.M.'s mother's birth certificate, showing her birth at Elmhurst Hospital in Queens, and educational records showing her attendance at New York City schools. *See* Exhs. B-C to Austin Decl. Counsel for R.G.M. was subsequently able to obtain more extensive educational records directly from the Department of Education. *See* Bensignor Decl. (attaching school records).

20. Since on or around November 20, 2025, R.G.M., age nine, has remained in ORR custody and in active ongoing removal proceedings. He has suffered increasing mental-health effects from his prolonged detention and separation from family. His grandmother, who resides in the same borough, has has only been allowed to visit him four or at most five times and to speak with him on the phone twice a week.

21. On May 29, 2026, immigration counsel for R.G.M. sent an email notifying shelter staff and ORR that R.G.M. is a U.S. Citizen. She also attached the birth certificates and the school records establishing this fact. On June 1, counsel also sought termination of R.G.M.'s removal proceedings in immigration court, but no decision was made on her motion at a hearing on June 3, 2026 and the case was continued to June 23, 2026.

22. On June 2, 2026, a court-appointed child advocate for R.G.M. filed a Best Interests Determination with ORR, also informing the agency that R.G.M. was a U.S. citizen and recommending immediate release given the significant liberty interests involved and the potential harm to R.G.M. from continued custody and separation from family. On June 5, the same child advocate filed an addendum to the prior Best Interests Determination with ORR, detailing the harm that R.G.M. is suffering as a result of his continued confinement. It states that after 194 days in custody, and now in a facility that has no other children, R.G.M. "presents as consistently sad, withdrawn, and emotionally detached." It further states that his child advocate and shelter staff " have expressed significant concern about his emotional well-being."

23. On June 5, 2026, a senior ORR official advised R.G.M.'s immigration counsel and child advocate that "ORR is following up on your May 29, 2026 communication asserting that the unaccompanied alien child (UAC) is a U.S. citizen and thus not a UAC. ORR has subsequently been in communication with DHS about this issue… ORR will continue to be in touch with DHS about this

issue." The email suggests that ORR is deferring to DHS to investigate R.G.M.'s claim and advise ORR on whether to release him. As set forth *infra*, on information and belief, ICE's investigation of claims to U.S. citizenship is governed by a memo issued in 2015.

LEGAL FRAMEWORK

A. Acquisition of U.S. Citizenship At Birth

24. "There are two sources of citizenship, and two only: birth and naturalization." *Miller v. Albright*, 523 U.S. 420, 423 (1998) (internal quotation marks omitted); *see also* U.S. Const. amend. IV § 1. Federal law provides for the transmission of citizenship based on birth from U.S. citizen parents to their children in two categories: derivative citizenship and acquired citizenship. Derivative citizenship is passed from the parent to the child after the child is born, once certain conditions are met. 8 U.S.C. § 1431. Acquired citizenship is conveyed at birth, either because a child is born in the United States or born abroad to a U.S. citizen parent. *See Miller v. Albright*, 523 U.S. at 424 ("Subject to residence requirements for the citizen parent, the citizenship of [children of unwed U.S.-citizen mothers and noncitizen fathers] is established at birth"). Acquisition of citizenship is automatic: no certificate of citizenship is required. *See Hizam v. Kerry*, 747 F.3d 102, 107 (2d Cir. 2014).

25. In 1952, Congress enacted the Immigration and Nationality Act ("INA"), which created the current legal framework for acquisition of U.S. citizenship from birth by a child born abroad to a U.S. citizen parent. *See* 8 U.S.C. § 1401 (defining "[n]ationals and citizens of United States at birth"). It also created a framework for children born out of wedlock, including a special rule for unwed U.S. citizen mothers. *See* 8 U.S.C. § 1409(c) ("Children born out of wedlock"):

> "(c) [...] a person born, after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the

> United States or one of its outlying possessions for a continuous period of one year."

26. Under this law, a child born abroad to an unwed U.S. citizen mother acquires U.S. citizenship at birth if the mother was physically present in the United States or a U.S. territory for a continuous period of one year prior to the child's birth. *Id.*

27. The law applicable to children of unwed mothers changed on June 12, 2017, but that change is applicable only to children born after that date. The change stems from a discrepancy in how children of unwed mothers and fathers were treated. By statute, a child born to an unwed U.S. citizen father could only acquire U.S. citizenship under the statute if the father was physically present in the U.S. for five years, at least two of which were the age of 14 and if other criteria are established. 8 U.S.C. § 1401(g); 8 U.S.C. §1409(a). On June 12, 2017, in *Sessions v. Morales-Santana*, the U.S. Supreme Court invalidated the differential physical presence requirement for unwed U.S. citizen mothers and fathers, holding that the different physical presence standards violated the Equal Protection Clause and that, going forward, the five years physical presence requirement set out in 8 U.S.C. § 1401(g) should apply prospectively to all unwed parents, regardless of sex. 582 U.S. 47, 77 (2017).

28. In 2018, after the U.S. Supreme Court's decision in *Sessions v. Morales-Santana*, United States Citizenship and Immigration Services ("USCIS") updated its policy manual to reflect that this decision—namely, the five-year residency requirement as to U.S.-citizen mothers—applies to persons born on or *after* June 12, 2017. *See* 12 USCIS-PM H.3(C)(2), available at https://www.uscis.gov/policy-manual/volume-12-part-h-chapter-3. By contrast, it notes that "the one-year continuous physical presence requirement remains in effect only for those children born prior to June 12, 2017 outside of the United States to unwed U.S. citizen mothers." *Id.*

29. Accordingly, a child born abroad in February 2017 to an unwed U.S. citizen is a U.S. citizen at birth by operation of law, as long as the mother has spent at least one continuous year physically present in the United States prior to the child's birth. *See also* Congressional Research Service, U.S. Citizenship for Children Born Abroad: In Brief, CRS Report No. R47223 (Aug. 25, 2022) (confirming that children who acquire U.S. citizenship at birth may apply for a U.S. passport and are not required to first apply for a Certificate of Citizenship).

B. Definition of Unaccompanied Immigrant Children and the Statutory Detention Authority of the Office of Refugee Resettlement

30. It is a fundamental principle of immigration law that immigration officials' authority to arrest, detain, and remove people from the United States does not extend to U.S. citizens.

31. The Constitution, federal law, and federal regulations and guidance all provide critical safeguards for U.S. citizens to prevent against unlawful deprivations of their liberty. Under the Fourth Amendment, immigration officials may only deprive an individual of their liberty if they have a basis to suspect an immigration violation or crime. See, e.g., *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975); *Orhorhaghe v. I.N.S.*, 38 F.3d 488, 497 (9th Cir. 1994); 8 U.S.C. § 1357. 21. Moreover, Congress has made clear that U.S. citizens may not be detained except where Congress otherwise authorizes it. 18 U.S.C. § 4001. The Immigration and Nationality Act does not provide immigration authorities with any power to arrest or detain U.S. citizens. *See, e.g.*, 8 U.S.C. §§ 1226, 1357(a).

32. ORR, a division of the Department of Health and Human Services, is responsible for "functions under the immigration laws of the United States with respect to the care of unaccompanied alien children." 6 U.S.C. § 279(a). This includes the "the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status." 6 U.S.C. § 279(b)(1).[1]

[1] In 2002, Congress passed the Homeland Security Act ("HSA"), transferring functions of the former INS to other government entities. Pub. L. No. 107-296, 116 Stat. 2153 (2002). Specifically, the HSA

33. An "unaccompanied alien child" is defined as one who:

(A) has no lawful immigration status in the United States;
(B) has not attained 18 years of age; and
(C) with respect to whom --
(i) there is no parent or legal guardian in the United States; or
(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

Id. § 279(g)(2). A U.S. citizen thus falls outside of the definition of "unaccompanied alien child".

34. ORR's policy guide states in Section 2.8.6[2] that the agency may "discover during the process of placing and providing services to a child that they already have legal immigration status or are a U.S. citizen. By law, ORR is not authorized to have custody of children with legal immigration status or U.S. citizenship. Therefore, these children cannot remain in ORR's care, and ORR must promptly release them from ORR-funded care provider facilities."

35. Although ORR does not have a published policy on investigating claims to U.S. citizenship, ICE published a policy governing its investigation in 2015 which to Petitioner's knowledge remains in effect.[3] That policy directive, 16001.2, states that "ICE personnel *must* assess the potential U.S. citizenship of an individual encountered by ICE if the individual makes or has made a claim to U.S. citizenship, as well as when certain indicia of potential U.S. citizenship, as identified in this Directive, are present in a case even if the individual does not affirmatively make a claim to U.S. citizenship." Investigation is undertaken in conjunction with other DHS offices, including the

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transferred authority over the care and custody of unaccompanied immigrant children from the Office of Juvenile Affairs in the former INS to ORR, housed within HHS. 6 U.S.C. § 279.

[2] Available at https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2.

[3] The policy is available on ICE's website and the website does not contain any indication that the policy has been rescinded or superseded. *See* U.S. Immigration and Customs Enforcement, Directive: 16001.2 Investigating the Potential U.S. Citizenship of Individuals Encountered by ICE, https://www.ice.gov/node/65267 (last accessed June 7, 2026). The policy is attached as an Exhibit to the instant petition.

Office of the Principal Legal Advisor (OPLA), and "absent extraordinary circumstances" should result in a memorandum submitted within one business day, and in all cases "as promptly as practicable," assessing the claim. A response from ICE headquarters must be made pursuant to the same deadlines.

36. Indicia of potential U.S. citizenship under the ICE memo include, inter alia,

> 3) There is some information suggesting that one or more of the individual's parents… are or were U.S. citizens, particularly when the timeline for the physical presence of these family members in the United States is incomplete…
>
> 10) The individual was born abroad out of wedlock and there is some information suggesting that one or both of his or her parents may have been U.S. citizens, but the initially available information is inconclusive regarding physical and legal custody and/or legitimation."

37. ICE's Directive provides that an investigation "*shall* include a check of all available DHS data systems and any other reasonable means available to the officer… the factual examination may include a review of the A-file and other pertinent documents, an interview of the individual, searches of vital records databases, interviews of family members and other individuals in possession of relevant information, and other appropriate investigation."

38. Critically, the Directive states that individuals in ICE custody "should be *immediately released*" if "the evidence in the case strongly suggests that the individual is a U.S. citizen or his or her claim to U.S. citizenship is credible on its face" or if "some probative evidence indicates that the individual may be a U.S. citizen but the evidence is inconclusive." *See* ICE Directive 16001.2, § 5.1(4)(a)(3) (citing § 5.1(2)(b)(1)-(2) of the Directive). The Directive thus creates a presumption of immediate release even if citizenship evidence is inconclusive, as long as there is "some probative evidence" that an individual in ICE custody is a U.S. citizen. In such situations, the Directive states that, "[o]n a case-by-case basis and in consultation with OPLA", DHS may place an individual in non-detained removal proceedings "to more conclusively resolve his or her immigration and citizenship

status if reasons remain to believe that he or she is an alien present in the United States in violation of law." *Id* § § 5.1(4)(c).

C. Barriers to Release of Unaccompanied Immigrant Children

39. ORR is not supposed to detain children long term who have safe, available sponsors. With strong bipartisan support, Congress expanded protections for unaccompanied children in the Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), reaffirming Congress' intent to treat unaccompanied children differently than the manner in which adults are treated by the Department of Homeland Security ("DHS"), both in detention and in immigration proceedings. 8 U.S.C. § 1232 *et seq*. The TVPRA requires that ORR ensure that unaccompanied children are "promptly placed in the least restrictive setting that is in the best interest of the child." *Id.* § 1232(c)(2)(A). Moreover, a 1997 consent decree requires the release of children to adult sponsors "without unnecessary delay" and that there be "prompt and continuous efforts" towards such release. *Flores v. Reno*, 85-cv-4544 (C.D.C. Jan. 28, 1997) at 14, 18. Thus, if ORR has jurisdiction over a child under 6 U.S.C. §§ 279(a), it must take prompt action to place that child in the least restrictive setting that is in the child's best interest.

40. But beginning in 2025, Respondents have drastically restricted the placement of children in ORR custody with sponsors by modifying the ORR regulations and adding new onerous requirements for sponsor vetting to the UC Policy Guide. As a result, the sponsor reunification process has slowed to a near-stop.[4] The average length of time in ORR custody rose from an average of 33 days in December 2024 to 182 days in August 2025.[5]

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[4] *See, e.g.* KUT NEWS "The Trump administration has all but stopped reuniting detained migrant children with families.", Dec. 19, 2025, available at https://www.kut.org/crime-justice/2025-12-19/texas-trump-immigration-children-reunification (last accessed May 31, 2025).

[5] *See* Neha Desai, et al., *The Unraveling of ORR: A Quick and Calculated Undoing of a System Intended to Protect Children,* The National Center for Youth Law, at 11, published Sept. 2025, available at https://youthlaw.org/wp-content/uploads/ncyl_the-unraveling-of-orr_sept2025_final.pdf (last accessed May 30, 2026). *see also* KIND, *A Timeline*

41. ORR has also heightened the sponsor vetting process and requiring more onerous documentation from sponsors and sponsors' household members. These changes to ORR policy are subject to ongoing litigation. *See e.g. Angelica S. v. HHS*, No. 25-CV-1405 (DLF), 2025 WL 1635369 (D.D.C. June 9, 2025) (granting a motion for class certification and enjoining the new sponsor documentation and income requirements for youth in ORR custody on or before April 22, 2025 and finding that "it is substantially likely that ORR acted arbitrarily and capriciously by not providing adequate justification for its new sponsor documentation requirements").

42. Courts across the country have concluded that these new sponsorship requirements are unlawful for various reasons. In terms of the overall delay caused by this process, "[s]everal courts have agreed that 'significant' and 'unexplained delay[s] in responding to [a proposed sponsor's] unification request' violate due process." *See M.A. v. Molina*, No. 4:26-CV-415, 2026 WL 741623, at *6 (quoting *Lucas R. v. Becerra*, No. 18-CV-5741, 2022 WL 2177454, at *27 (C.D. Cal. March 11, 2022), and citing *J.E.C.M. v. Marcos*, 689 F. Supp. 3d 180, 197 (E.D. Va. 2023); *Maldonado v. Lloyd*, No. 18-CV-3089, 2018 WL 2089348, at *1 (S.D.N.Y. May 4, 2018); *Santos v. Smith*, 260 F. Supp. 3d 598, 613-14 (W.D. Va. 2017)) (alteration in original). Likewise, courts have found the sponsor's U.S.-issued identification requirement to present due process concerns. *See E.F.E.L. v. Noem*, No. 26-CV-02507, 2026 WL 1045550 (N.D. Ill. Apr. 17, 2026) (ordering immediate release of unaccompanied minor held in ORR custody for five months for vetting where release was delayed due to a new Trump-era requirement); *see also Angelica S. v. HHS*, No. 25-CV-1405 (DLF), 2025 WL 1635369 (D.D.C. June 9, 2025) (enjoining the new sponsor U.S. identification requirement for a sub-class of youth in ORR custody on or before April 22, 2025).

Spotlight: ORR's Indefinite Detention of Unaccompanied Children Inflicts Trauma and Thwarts Due Process, published March 2026, available at https://supportkind.org/wp-content/uploads/2026/04/26_Timeline-Spotlight-Indefinite-Detention-2.pdf (last accessed May 30, 2026).

D. Harms of Prolonged Custody

43. The serious harm of prolonged detention of unaccompanied children is well documented. *See Lucas R.*, 2022 WL 2177454 at *17 ("Numerous child welfare experts have expounded on the harm that detention causes children, particularly young children" and "[i]t is undisputed that being separated from family members is inimical to a child's well-being").

44. Extended lengths of stay in ORR custody harms children's mental health and wellbeing. *See, e.g.*, Dep't of Health and Hum. Servs., Office of the Inspector Gen., *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody*, 13 (Sept. 2019), https://perma.cc/YLT7-R3HP at 12-13 ("According to facility staff, longer stays [in ORR custody] resulted in higher levels of defiance, hopelessness, and frustration among children, along with more instances of self-harm and suicidal ideation.").

CLAIMS FOR RELIEF

FIRST CLAIM
VIOLATION OF CONSTITUTIONAL RIGHT TO DUE PROCESS

45. Petitioner restates and realleges all paragraphs above as if fully set forth herein.

46. Respondents have no lawful authority to detain a United States citizen and in doing so have violated Petitioner's right to due process.

47. Under the Fifth Amendment, the government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. at 690. The right to substantive due process "prevents the government from engaging in conduct that 'shocks the conscience' or interferes with rights 'implicit in the concept of ordered liberty." *United States v. Salerno*, 481 U.S. 739, 746 (1987).

48. The right to procedural due process requires that the government many not deprive an individual of their constitutional rights without meaningful notice and an opportunity to be heard before a neutral arbiter to protect against the risk of erroneous deprivation. As for what process is due, the Second Circuit has held that the *Matthews v. Eldridge* balancing test is applicable to determine the adequacy of process in the context of civil immigration confinement. *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). The *Mathews* test requires balancing of: "[f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

49. Petitioner's detention violates his right to substantive and procedural due process. First, his detention by immigration authorities for over six months and separation from his grandmother, a loving caretaker, notwithstanding his acquisition of U.S. citizenship at birth is an egregious and unjustified deprivation of liberty that shocks the conscience. To his knowledge and the knowledge of his family, Respondents have taken no affirmative steps to investigate or verify his U.S. citizenship since he was detained, despite being on notice that his mother is a U.S. citizen. Petitioner's detention would be unlawful under any circumstances but is particularly unconscionable here, where it has led to the prolonged detention of a young child.

50. Second, Petitioner has been deprived of due process of law. Petitioner has a paramount interest in both his liberty. "[T]he interest in being free from physical detention" by the state is "the most elemental of liberty interests[.]" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). A child's interest in being free from confinement is no narrower than that of an adult. *In re Gault*, 387 U.S. 1, 13 (1967)

("neither the Fourteenth Amendment nor the Bill of Rights is for adults alone"). He also has an interest in family unity. *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") (quotations omitted).

51. In the face of this overwhelming interest, Respondents have ignored clear evidence that R.G.M. is a U.S. citizen and failed to conduct any investigation whatsoever to confirm his citizenship or to release him while this investigation is pending. Worse, they repeatedly told his grandmother that his mother's citizenship and residence in the U.S. is irrelevant, although it is dispositive of their own right to detain him. The agency has had R.G.M.'s birth certificate, which lists his mother's U.S. citizenship, for over six months. It has verified the authenticity of his birth certificate.

52. That evidence should at a minimum give rise to an immediate investigation on the part of Respondents as to whether they are unlawfully detaining a U.S. citizen. *See Lyttle v. United States*, 867 F. Supp. 2d 1256, 1288 (M.D. Ga. 2012) ("When an officer learns of information that suggests a detainee should not continue to be detained, particularly when evidence exists that the detainee is a U.S. citizen, then that officer has a duty to make an independent assessment as to whether he has a reasonable suspicion that the detainee is an alien.") Yet no investigation appears to have occurred and the agency has instead placed the burden entirely on Petitioner's family to prove his citizenship, without providing any clear guidance or steps to do so, and insisted it will continue to detain Petitioner pending the outcome. As with the release process for unaccompanied children generally, Respondents are throwing up road blocks and obstructing Petitioner's right to release and family unity. Respondents' actions are in violation of the 2015 ICE policy directive, which provides for a prompt and comprehensive investigation and the release of individuals with probative evidence of citizenship.

53. As to the third prong of the *Mathews* analysis, Respondents have no interest in the unlawful detention of a U.S. citizen under the false premise that he has no lawful immigration status. By contrast, there is a strong public interest in the welfare and wellbeing of children. *See Santos*, 260 F. Supp. 3d at 614-15; *Maldonado*, No. 18 CIV. 3089 (JFK), 2018 WL 2089348, at *10 ("The most obvious Government interests here are protecting the welfare of children and the safety of the public."). Prolonged detention and separation from family are profoundly harmful for children, particularly young children like Petitioner.

54. As noted, Respondents' actions violate ICE's policy on investigating potential claims to U.S. citizenship described *supra* at ¶¶ 35-38, which is supposed to be triggered by any indicia of U.S. citizenship—which in R.G.M.'s case was provided to the agency in December 2025. Respondents' actions also violate ICE's policy directive which orders "immediate release" of individuals in custody where credible evidence "strongly suggests" or even where only "some probative evidence indicates that the individual may be a U.S. citizen." On information and belief, ORR has deferred to DHS to investigate and verify R.G.M.'s potential citizenship —although it does not appear to have done that until R.G.M. obtained legal representation in June 2026.

55. Because his detention violates his right to due process, Petitioner seeks his immediate release.

SECOND CLAIM FOR RELIEF
VIOLATION OF THE APA AND 6 U.S.C. §279

56. Petitioner restates and realleges all paragraphs above as if fully set forth herein.

57. Respondents have no statutory authority to detain U.S. citizens. The statute providing for ORR to maintain custody of minors limits such authority to custody of a child "who has no lawful

immigration status in the United States." 6 U.S.C. §279(g)(2). Petitioner has lawful immigration status because he acquired United States citizenship at birth by operation of law.

58. In failing to release Petitioner, Respondents have also violated their own internal policy against detaining U.S. citizens.

59. Respondents also violated their own policy directive regarding detention of individuals who present indicia of U.S. citizenship. Petitioner's grandmother provided a birth certificate to Respondents days after his detention which clearly shows that his mother is a U.S. citizen. ORR has verified its authenticity. Despite Respondents' possession of this probative evidence of U.S. citizenship, Respondents failed to investigate further, thereby violating their own internal guidance. *See supra* at ¶¶ 35-38. Respondents' detention of Petitioner exceeds their authority under the statute and thereby violates the Administrative Procedure Act.

THIRD CLAIM FOR RELIEF

VIOLATION OF THE FOURTH AMENDMENT

60. Petitioner restates and realleges all paragraphs above as if fully set forth herein.

61. "The Fourth Amendment applies to all seizures of the person." *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975).

62. Respondents have lacked probable cause to support the seizure of Petitioner for nearly half a year. As indicated above, his birth certificate indicates his mother is a U.S. citizen and his grandmother has repeatedly told ORR that Petitioner's mother is a U.S. citizen. To the extent these facts were not sufficient to conclude Petitioner acquired U.S. citizenship by birth, and therefore cannot lawfully be detained, Respondents should have immediately made further inquiry. *See Mitchell v. City of New York*, 841 F.3d 72, 78 (2d Cir. 2016) ("[T]he failure to make a further inquiry when a reasonable person would have done so may be evidence of lack of probable cause.") (citing *Colon v. City of N.Y.*,

455 N.E.2d 1248, 1250 (1983)); *Hernandez v. United States*, 939 F.3d 191, 202 (2d Cir. 2019) (concluding "no reasonable officer" would have detained petitioner, a U.S. citizen, on the basis of a detainer "without conducting an inquiry… [and] a reasonable inquiry would have revealed that Hernandez was a U.S. citizen who could not have been subject to an immigration detainer."); *Brown v. Ramsay*, 785 F. Supp. 3d 1214, 1227 (S.D. Fla. 2025) (officers should have investigated wrongfully detained U.S. citizen's claim to citizenship). Even the most basic further inquiry in this case—such as interviewing either Petitioner's mother or his maternal grandmother about the duration of his mother's residence in the U.S. prior to his birth—would demonstrate that Petitioner meets the requirements to have acquired citizenship at birth.

63. Respondents' actions violate Petitioner's right to freedom from unreasonable seizure under the Fourth Amendment.

FOURTH CLAIM FOR RELIEF

VIOLATION OF 8 U.S.C. § 1503

64. Petitioner restates and realleges all paragraphs above as if fully set forth herein.

65. Petitioner has been wrongfully denied the rights and privileges of a United States national and citizen within the meaning of 8 U.S.C. § 1503 by virtue of his detention as an "unaccompanied alien child" by the Office of Refugee Resettlement.

PRAYER FOR RELIEF

Petitioner prays that the Court assume jurisdiction over this Petition and Complaint and grant the following relief:

A. Declare that Petitioner's detention is unlawful and in violation of the Homeland Security Act and the Administrative Procedure Act;

B. Issue a Writ of Habeas Corpus compelling Respondents to immediately release Petitioner from custody without any restrictions on his liberty;

C. An award of costs and reasonable attorneys' fees under the Equal Access to Justice Act, and any other applicable statute or regulation; and

D. Any other relief the Court deems just and proper.

Dated: June 8, 2026

Respectfully submitted,

/s/ Paige Austin
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Attorneys for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent the Petitioner and submit this verification on his behalf, as he is detained and a child. I have spoken with Petitioner's family and reviewed the records provided to us from his family, other providers, and the Department of Education as well as internal records at Make the Road New York. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 8th day of June, 2026.

Respectfully Submitted,

/s/ Paige Austin
Paige Austin, Esq.
Attorney for Petitioner