I.E.T.P., a minor, by and through Next Friend, A.R.T.P.,

Petitioner-Plaintiff,

v.

MARKWAYNE MULLIN, in his official capacity as Secretary of the U.S. Department of Homeland Security, TODD BLANCHE, in his official capacity as Acting Attorney General of the United States; 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 of Refugee Resettlement; MARIANA VALDEZ in her official capacity as Office of Refugee Resettlement Federal Field Specialist; JUSTINE CHRISTAKOS in her official capacity as Chief Executive Officer of Abbott House; U.S. Department of Homeland Security; U.S. Department of Health and Human Services; U.S. Office of Refugee Resettlement.

Respondents-Defendants.

Case No. 1:26-cv-06490

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

TABLE OF CONTENTS

INTRODUCTION.....1

FACTUAL BACKGROUND.....1

LEGAL ARGUMENT.....2

A. **Petitioner is Not Required to Exhaust All Administrative Remedies**.....2

B. **Respondents Violated Petitioner's Statutory and Due Process Rights by Failing to Adjudicate Petitioner's Sponsorship Application in a Timely Manner**.....3

C. **Petitioner's Continued Detention in ORR Custody Violates the *Flores* Settlement Agreement**.....6

D. **Respondents' actions violate the APA, TVPRA, Foundational Rule, and *Accardi* Doctrine**.....7

CONCLUSION.....9

TABLE OF AUTHORITIES

Cases

A.N.P.S. v. Salazar, No. 25 Civ. 14778, 2025 WL 3707333 (N.D. Ill. Dec. 22, 2025).....3

Air All. Houston v. Environmental Protection Agency, 906 F.3d 1049 (D.C. Cir. 2018).....8

Angelica S. v. U.S. Department of Health and Human Services, 786 F. Supp. 3d 158 (D.D.C. 2025).....9

Beharry v. Ashcroft, 329 F.3d 51 (2d Cir. 2003) 3

E.F.E.L. v. Noem, 26 Civ. 02507, 2026 WL 1045550 (N.D. Ill. Apr. 17, 2026).....3

E.H.C.F. v. Kennedy, No. 25 Civ. 2142 (VDO), 2026 WL 145229 (D. Conn. Jan. 16, 2026)..... 4

Flores v. Lynch, 828 F.3d 898 (9th Cir. 2016).....6

Hamdi v. Rumsfeld, 542 U.S. 507 (2004).....4

In re Gault, 387 U.S. 1 (1967).....4

J.E.C.M. v. Lloyd, 352 F. Supp. 3d 559 (E.D. Va. 2018).....9

K.W. on behalf of K.A. v. City of New York, No. 24-3042, 177 F.4th 127 (2d Cir. 2026).....4

Kia P. v. McIntyre, 235 F.3d 749 (2d Cir. 2000).....6

L.V.M. v. Lloyd, 318 F. Supp. 3d 601 (S.D.N.Y. 2018).....9

Laing v. Ashcroft, 370 F.3d 994 (9th Cir. 2004).....3

Lopez v. Sessions, No. 18 Civ. 4189 (RWS), 2018 WL 2932726 (S.D.N.Y. June 12, 2018).....5

Lucas R. v. Becerra, 2022 WL 2177454 (C.D. Cal. Mar. 11, 2022).....5

Maldonado v. Lloyd, No. 18 Civ. 3089 (JFK), 2018 WL 2089348 (S.D.N.Y. May 4, 2018).....3

Mathews v. Eldridge, 424 U.S. 319 (1976).....3

Orellana v. Francis, No. 25- CV-04212 (OEM), 2025 WL 2822640 (E.D.N.Y. Oct. 3, 2025).....7

Saravia v. Sessions, 905 F.3d 1137 (9th Cir. 2018).....8

Tenenbaum v. Williams, 193 F.3d 581 (2d Cir. 1999).....4

Trump v. J.G.G., 604 U.S. 670 (2025).....7

United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954).....9

Regulations

45 C.F.R. § 410.1202.....4

45 C.F.R. § 410.1203(a).....8

45 C.F.R. § 410.1003(f).....8

45 C.F.R. § 410.1209(e).....8

Statutes

28 U.S.C. § 2241.....2

5 U.S.C. § 706(1).....7

8 U.S.C. § 1232(c)(3).....7

8 U.S.C. § 1232(c)(2)(A).....7

INTRODUCTION

Petitioner is a 17-year-old boy who has been detained for 240 days while Respondents decide whether to release him to his adult brother. At every stage of the sponsorship process, Petitioner's brother has promptly complied with each requirement imposed by Respondents. By contrast, Respondents have failed to take meaningful steps to adjudicate the sponsorship application promptly and without delay.

While Respondents argue that administrative exhaustion precludes seeking federal court relief, this is not required by statute and is not a proper remedy for the multiple due process violations in this matter. The significant delays in I.E.T.P.'s release violate his due process rights of family integrity, freedom, and liberty, in addition to violating the TVPRA, Foundational Rule, and the *Accardi* Doctrine.

FACTUAL BACKGROUND

The parties seem to agree on several salient facts. Petitioner is a 17-year-old boy who entered the United States in December 2025 and was taken into custody by Respondents. Declaration of Elizabeth Kronk, ECF No. 16 at ¶ 30. As of today, he has spent 240 days in Respondents' custody. Throughout that time, Respondents have subjected Petitioner's adult brother (his proposed sponsor) to extensive, and intrusive, vetting requirements. *See* ECF No. 16 (describing the months-long process that Petitioner's brother has undergone to prove his suitability). At no time during the vetting process have Respondents identified any concerns about Petitioner's brother's ability to care for Petitioner.

By contrast, Respondents failed to exercise their due diligence in processing the sponsorship application. By Respondents' own admission, Petitioner's sponsor vetting process was not initiated until six weeks after Petitioner's brother submitted his *second* sponsorship

application on January 30, 2026. ECF 16 at ¶¶ 39-40. The sponsorship process was further delayed because the assigned FFS was on leave. ECF 16 at ¶ 42. The sponsorship application was later closed because Petitioner's brother had not yet received an ITIN (ECF 16 at ¶ 43), even though he provided proof of ITIN application, and ORR regulations specify that the sponsorship process can proceed during the pendency of the ITIN application process. *See* UC Policy Guide, Section 2.2.3.

Respondents did not initiate a home study until August 1, 2026, even though the sponsor application was submitted six months earlier. ECF 16 at ¶ 57. Respondents also did not require Petitioner's sponsor to undergo DNA testing until August 6, 2026, even though this could have been requested and submitted at any time in the past seven months. Furthermore, Petitioner's relationship to his proposed sponsor has already been confirmed via birth certificates confirming that the two brothers have the same biological parents.

LEGAL ARGUMENT

Respondents' opposition to releasing Petitioner from their custody is indefensible and unlawful. They do not claim Petitioner's brother is an unsuitable caretaker. Nor do Respondents claim that Petitioner is a flight risk or a danger to society if released. Instead, Respondents effectively ask this Court to further delay Petitioner his liberty because they failed to promptly evaluate his sponsorship application when it was submitted. The Court should decline that invitation. As explained below, Respondents offer no coherent explanation for why they allowed Petitioner's sponsorship application to languish for months. Given the circumstances, the Court should grant the petition and order Petitioner's release.

A. Petitioner is Not Required to Exhaust All Administrative Remedies

As Respondents acknowledge, 28 U.S.C. § 2241 does not have a statutory exhaustion requirement. While District Courts have held that exhaustion is necessary in some immigration

detention contexts, this is not the case when a child is detained in ORR custody. *See Maldonado v. Lloyd*, No. 18 Civ. 3089 (JFK), 2018 WL 2089348, at *10 (S.D.N.Y. May 4, 2018) (finding that the petitioner raised "substantial constitutional question" under the Fifth Amendment and therefore "the Court will not require exhaustion"); *E.F.E.L. v. Noem*, 26 Civ. 02507, 2026 WL 1045550, at *5 (N.D. Ill. Apr. 17, 2026) (rejecting that exhaustion precluded judicial review of UAC habeas petition); *A.N.P.S. v. Salazar*, No. 25 Civ. 14778, 2025 WL 3707333, at *6 (N.D. Ill. Dec. 22, 2025) (declining to require UAC who was re-detained in ORR custody to exhaust administrative remedies).

The exceptions to the exhaustion requirement are outlined when "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004); *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (internal quotation marks omitted). Exceptions apply in this case. First, Petitioner has raised a substantial constitutional question as to due process under the Fifth Amendment. Petitioner's prolonged detention and separation from his brother violate the long-standing protected interest of family integrity. *See Maldonado v. Lloyd.* Second, the prolonged detention of a child causes irreparable injury. The harms of detention on the mental health of children are well documented.[1]

B. Respondents Have Violated Petitioner's Due Process Rights by Failing to Adjudicate His Sponsorship Application in a Timely Manner

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). Respondents contend

[1] *Punishing Trauma: Incident Reporting and Immigrant Children in Government Custody,* The Young Center (2022), https://www.theyoungcenter.org/wp-content/uploads/2025/03/20220921FINALSIRREPORT-HYPERLINKED-1.pdf

that Petitioner's right to be free from custody and right to family integrity are limited by his age and immigration status. Resp. Reply, ECF 17 at 19. However, "[T]he interest in being free from physical detention" by the state is "the most elemental of liberty interests," regardless of citizenship. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Furthermore, "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." *In re Gault,* 387 U.S. 1, 13 (1967). Although Respondents allege that Petitioner's extended detention in ORR custody is for his own safety and best interest, this detention does not meaningfully protect his 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, 177 F.4th 127, 141 (2d Cir. 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"); *E.H.C.F. v. Kennedy*, No. 25 Civ. 2142 (VDO), 2026 WL 145229, at *12 (D. Conn. Jan. 16, 2026) (finding risk of erroneous deprivation to family integrity and due process violation).

Accordingly, all that remains for the Court to decide is whether Respondents' 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 to take further steps to ensure that release is in Petitioner's best interests. Specifically, they claim continued detention is required because "any delay is attributable to the necessary vetting process which is intended to protect the interests of UACs such as Petitioner" and because "Upon receipt of the Division of Vetting report, expected by August 18, the federal field specialist assigned to A.R.T.P.'s application will make the final sponsor suitability recommendation under 45 C.F.R. § 410.1202." ECF 17 at 20-21. But if Respondents' interest is Petitioner's well-being, that interest has already been served:

Respondents subjected Petitioner's brother to months of investigation and back-and-forth while shuffling his case from one FFS to the next, and after finally conducting the majority of steps in the vetting process, they have found no basis for concern. See ECF 16 at ¶¶ 33-59.

Due process requires more than an agency's unsupported claim to be acting in an individual's best interest. 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 a vague insistence that the sponsorship application is still in progress, without an explanation for the months-long delays. Respondents acknowledge, for example, that a new sponsorship application was submitted on January 30, 2025, but that the FFS made no attempts to contact the sponsor to process that application until March 15, 2026. ECF 16 at ¶¶ 39-40. That kind of unreasoned delay 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."); *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.").

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 Petitioner's wellbeing, not harm it." ECF 17 at 15. 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, ¶ 59 (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 brother, because they have not completed all the steps required in the sponsorship process; however, their failure to do so is solely due to their own delays in evaluating the sponsorship materials the Petitioner's brother submitted. This is not child protection; it is delay dressed up as process.

C. Petitioner's Continued Detention in ORR Custody Violates the *Flores* Settlement Agreement

Petitioner's detention of 240 days violates the *Flores* settlement agreement. Respondents concede that "where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others, the INS shall release a minor from its custody without unnecessary delay." *Flores v. Lynch*, 828 F.3d 898, 903 (9th Cir. 2016). ORR records confirm that the Petitioner is not a flight risk, and therefore, his detention is not required to secure his timely appearance before USCIS or the immigration court. Additionally, as explained above, there is no indication that the Petitioner would be unsafe in the custody of his brother, who has already favorably completed every sponsorship vetting step required of him.

Additionally, Respondents allege that Petitioner's continued detention is "not 'undue' as it has been the result of ORR's ongoing suitability assessment." ECF 17 at 23. However, central to Petitioner's claim for relief is the argument that the suitability assessment *itself* has been substantially delayed, due to Respondents' failure to promptly contact the sponsor to initiate

vetting and to evaluate the sponsor's submitted materials in a timely manner. Delays while the adjudicating authority is on leave, or where the authority simply fails to initiate the sponsorship process for six weeks with no explanation, are indeed unnecessary, and in violation of the *Flores* settlement agreement.

D. Respondents' actions violate the APA, TVPRA, Foundational Rule, and *Accardi* Doctrine

As with Petitioner's due process claims, Respondents mostly sidestep his claim that the undue delays in processing his sponsorship application violate 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). ECF 17 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). Respondents admit that Section 706(1) of the APA permits a reviewing court to "compel agency action" only where it has been "unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). As described above, the processing of Petitioner's sponsorship application has been unreasonably delayed.

Respondents add that the TVPRA has not been violated because it mandates that ORR release a child only to a sponsor who ORR determines will safely care for the child. 8 U.S.C. § 1232(c)(3). But 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). Contingent upon this

requirement is the assumption that ORR will take action to promptly assess sponsor suitability in furtherance of the release of children to sponsors; the TVPRA did not intend to permit Respondents to delay the adjudication of sponsorship applications indefinitely and then claim that sponsorship suitability has not yet been determined.

After 240 days of detention, ORR has failed to demonstrate prompt efforts toward Petitioner's release, as required by both the TVPRA and Foundational Rule, 45 C.F.R. § 410.1203(a). As documented in ORR records, Declaration of Petitioner's Counsel (ECF 1-1), and Declaration of Elizabeth Kronk (ECF 16), ORR failed to promptly initiate sponsor vetting, respond to the sponsor, and continue processing the sponsorship application as required.

ORR must make and record prompt and continuous efforts toward a child's release. 45 C.F.R. § 410.1203(a). ORR is also required to promptly place a child "in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A); *see also* 45 C.F.R. § 410.1003(f). The least restrictive setting here is release from ORR custody to a vetted sponsor. *See* 8 U.S.C. § 1232(c)(2)(A); 45 C.F.R. § 410.1209(e); *Saravia v. Sessions*, 905 F.3d 1137, 1143 (9th Cir. 2018). ORR repeatedly and intentionally delayed the vetting process of Petitioner's brother. The ongoing detention of Petitioner continues to violate the Foundational Rule and the TVPRA.

The Unaccompanied Noncitizen Child Bureau (UACB) Field Guidance policy, imposing in-person verification appointments and heightened requirements for sponsorship, is in direct conflict with the purpose of the TVPRA and Foundational Rule. *Air All. Houston v. Environmental Protection Agency*, 906 F.3d 1049, 1064 (D.C. Cir. 2018) (holding that rule delaying effectiveness of Clean Air Act regulation was contrary to the very purposes of the act). District courts have regularly permitted similar APA challenges to ORR policies that impact

children's opportunities for release. See, e.g., *Angelica S. v. U.S. Department of Health and Human Services*, 786 F. Supp. 3d 158, 172- 75 (D.D.C. 2025); *L.V.M. v. Lloyd*, 318 F. Supp. 3d 601, 612 (S.D.N.Y. 2018); *J.E.C.M. v. Lloyd*, 352 F. Supp. 3d 559, 582-84 (E.D. Va. 2018)

Further, Respondents' failure to release Petitioner to an approved sponsor violates their own "existing valid regulations" to place Petitioner in the least restrictive setting that is in his best interests. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); 45 C.F.R. § 410.1003 (f); 8 U.S.C. § 1232(c)(2)(A). This is a clear violation of the *Accardi* doctrine.

The failure to release Petitioner to his brother violates the APA, *Accardi* doctrine, and the TVPRA for all reasons stated in the original petition, as it contradicts statutory requirements and regulations to promptly release unaccompanied children to the least restrictive setting that is in their best interests.

CONCLUSION

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

Dated: August 18, 2026

Respectfully submitted,

/s/ Lauren Fouda
The Door's Legal Services Center
121 Avenue of the Americas, 3rd Floor
New York, New York 10013
929-819-4367
LFouda@door.org

Attorney for Petitioner-Plaintiff

Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c), the undersigned counsel hereby certifies that this memorandum complies with the allocated word limit of ten (10) pages. As measured by the word processing system used to prepare it, and excluding the items set forth in the rule, there are 2677 words in this memorandum.

/s/ Lauren Fouda
Lauren Fouda