UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LAUREN FOUDA, next friend of E.X. and P.X., minor children,

Petitioners,

v.

ANGIE SALAZAR, Acting Director of the Office of Refugee Resettlement, in her official capacity;

ROBERT F. KENNEDY, JR., Secretary of Health and Human Services, in his official capacity;

MARKWAYNE MULLIN, Secretary of Homeland Security, in his official capacity;

MARIANA VALDEZ, Federal Field Specialist at the Office of Refugee Resettlement, in her official capacity;

JUSTINE CHRISTAKOS, President and Chief Executive Officer of Abbott House, in her official capacity;

Respondents.

Case no. 26-6559

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. No liberty interests are more sacred—or more tightly interwoven with our Nation's foundational legal principles—than the rights to family integrity and freedom from unjustified restraint. Children enjoy these rights to the same extent as adults. And, like adults, children may seek vindication and relief before the federal judiciary when the government unlawfully denies them their freedom. This petition for writ of habeas corpus asks the Court to do just that.

2. Petitioners, Eskarh X. and Pepe X.,[1] are 13- and 9-year-old siblings whom Respondents have held in confinement for nearly six months without apparent progress toward their release. [redacted] Eskarh and Pepe each have pending applications for asylum because they seek refuge in this country [redacted]

3. Petitioners' mother, [redacted], lives just 200 miles from her children's place of detention. In anticipation of a reunion with her children, Ms. [redacted] has rented a spacious apartment in a safe community, evaluated local schools, and built bunk beds in her spare room. She has, for months, promptly complied with each and every requirement—and the next one after that—imposed by the government. She has dutifully completed an extensive "sponsor" application; provided photo identification, fingerprints, and a DNA sample; delivered proof of her income, address, and Social Security Number; and submitted to a home study. Still, her second bedroom sits empty.

4. Respondents, throughout their six-month prolongation of Ms. [redacted]'s sponsorship application, have been consistently dilatory and indifferent. They have flouted statutory and regulatory imperatives to act swiftly, to place the children in the least-restrictive available setting, and to always prioritize the children's best interests. Whatever Respondents' motivation for disregarding their legal duty to promptly reunify Eskarh and

[1] Petitioners initiate this action under self-selected pseudonyms to protect their identities. A motion to proceed pseudonymously will shortly follow.

Pepe with their mother, they have produced no evidence—nor even alleged—that Ms. [redacted] is unfit to receive and care for her children.

5. Each passing day further exposes Eskarh and Pepe to the well-documented, pernicious effects of prolonged confinement of young children. What is more, the evidence suggests that Respondents may imminently transfer these children to a far-away detention facility in Texas—dislocating them from their mother and their present legal counsel—where they may face acute harms on account of their gender identities. Worse yet, Respondents may seek to expel Petitioners from the country—a tactic they have deployed, albeit unsuccessfully, once before—in violation of federal law and the children's rights.

6. But Respondents may not treat Eskarh and Pepe as pawns. Our Supreme Court recognized over a hundred years ago that a child is no "mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 535 (1925). Respondents have wholly failed in that regard. But Petitioners' mother is poised to take over and to properly nurture her children and prepare them for their long lives ahead.

7. Respondents' failure to discharge their legal duties entitles these young Petitioners to relief in habeas. This Court must order the children's immediate release to their mother.

PARTIES

8. Petitioner Eskarh X. is a 13-year-old [redacted] whom the Government has deemed an unaccompanied child and placed in the custody of the Office of Refugee Resettlement ("ORR"). He is currently detained, together with his sibling Pepe, in transitional foster care at Abbott House, an ORR subcontractor whose offices are located at [redacted]

[redacted]. Eskarh wishes to reunify with his mother in Rhode Island.

9. Petitioner Pepe X. is a 9-year-old [redacted] whom the Government has deemed an unaccompanied child and placed in ORR custody. He is currently detained, together with his sibling Eskarh, in transitional foster care at Abbott House, an ORR subcontractor whose offices are located at [redacted]. Pepe wishes to reunify with his mother in Rhode Island.

10. Lauren Fouda is a Supervising Attorney with the Detained Minors Project at The Door Legal Services Center and serves as Next Friend to Petitioners Eskarh and Pepe, the real parties in interest in this litigation. Because she has a significant relationship with Petitioners, Ms. Fouda is qualified to represent their interests.

11. Respondent Angie Salazar is the Acting Director of ORR, the agency responsible for the care and custody of detained unaccompanied children. As Acting Director of ORR, Respondent Salazar is a legal custodian of Petitioners, responsible for their detention and authorized to produce and release them. She is sued in her official capacity. Respondent Salazar's address is Office of Refugee Resettlement, Administration for Children and Families, 330 C Street SW, Room 5123, Washington, DC 20201.

12. Respondent Robert F. Kennedy, Jr. is the Secretary of the U.S. Department of Health and Human Services (HHS), a cabinet-level executive department and parent agency to ORR. Respondent Kennedy is responsible for administering provisions of the Trafficking Victims Protect Reauthorization Act and overseeing ORR's detention of unaccompanied children. Respondent Kennedy is thus a legal custodian of Petitioners. He is sued in his

official capacity. Respondent Kennedy's address is U.S. Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201.

13. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security ("DHS"), a cabinet-level executive department that administers and enforces federal immigration law. Respondent Mullin is responsible for adjudicating applications for immigration benefits, including asylum, and pursuing the detention and removal of noncitizens. He is sued in his official capacity. Respondent Mullin's address is U.S. Department of Homeland Security, Washington, DC 20528.

14. Respondent Mariana Valdez is a Federal Field Specialist ("FFS"), the ORR official immediately responsible for the care and custody of unaccompanied children at Abbott House. In this capacity, Respondent Valdez is responsible for making placement determinations, administering the family-reunification process, and considering sponsorship applications. As such, Respondent Valdez is a legal custodian of Petitioners. She is sued in her official capacity. Respondent Valdez's address is ACF Office of Regional Operations, 26 Federal Plaza, Room 4114, New York, NY 10278.

15. Respondent Justine Christakos is the President and Chief Executive Officer of Abbott House. In this capacity, Respondent Justine Christakos is responsible for the care and custody of unaccompanied children at Abbott House and is therefore Petitioners' immediate custodian. She is sued in her official capacity. Respondent Justine Christakos' address is Abbott House, [redacted].

JURISDICTION AND VENUE

16. Federal district courts generally have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of deprivations of liberty in immigration custody. *See*

Demore v. Kim, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001); *Immigr. & Naturalization Servs. v. St. Cyr*, 533 U.S. 289, 314 (2001).

17. District courts have subject-matter jurisdiction over petitions for writ of habeas corpus under the Suspension Clause, U.S. Const. art. I, § 9, cl. 2; sections 2241(a) (assigning federal courts the power to grant writs of habeas corpus) and 1331 (assigning federal courts original jurisdiction over questions of federal law) of Title 28 of the United States Code; the All Writs Act, 28 U.S.C. § 1651; and the Administrative Procedure Act, 5 U.S.C. § 701 et seq.

18. Habeas courts have additional power to grant declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201(a), and Rule 65 of the Federal Rules of Civil Procedure. Finally, district courts have inherent authority, as recognized in *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001), to grant interim release, pending adjudication, to immigration habeas petitioners properly within the Court's jurisdiction.

19. The Court's exercise of habeas jurisdiction in this case is proper because Petitioners remain in Respondents' custody, are not free to leave, and, despite their wishes, have been denied release to their mother. *See Hensley v. Mun. Ct.*, 411 U.S. 345, 351 (1973) (holding that a petitioner meets the custody requirement of the habeas-corpus statute where he faces "restraints not shared by the public generally" and "cannot come and go as he pleases").

20. Venue properly lies within the Southern District of New York because Petitioners are detained in Respondents' custody within the district. *See* 28 U.S.C. § 2241(a), (d); *Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004) (directing habeas petitioners to "file

the petition in the district of confinement"); *Ozturk v. Hyde*, 136 F.4th 382, 390 (2d Cir. 2025) (recognizing the district-of-confinement rule); *see also* 28 U.S.C. § 1391(b) (permitting civil actions in the district "in which a substantial part of the events or omissions giving rise to the claim occurred").

21. Petitioners have never previously filed a petition for writ of habeas corpus in any court to review the lawfulness of their detention. *See* 28 U.S.C. § 2244(a)–(b).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

22. Congress has imposed no requirement that noncitizens exhaust administrative remedies before challenging their detention via habeas. *See* 28 U.S.C. § 2241; *Michalski v. Decker*, 279 F. Supp. 3d 487, 495 (S.D.N.Y. 2018); *Araujo Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014). Absent a statutory command, exhaustion is a judicially created, prudential doctrine, compliance with which courts may waive or excuse in an exercise of "sound judicial discretion." *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992), *superseded by statute on other grounds*, 42 U.S.C. § 1997e(a); *accord Beharry v. Ashcroft*, 329 F.3d 51, 56–57, 62 (2d Cir. 2003); *Michalski*, 279 F. Supp. 3d at 495.

23. District courts will not require administrative exhaustion where: "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Beharry*, 329 F.3d at 62 (quoting *Howell v. Immigr. & Naturalization Servs.*, 72 F.3d 288, 291 (2d Cir. 1995)). In short, if administrative process cannot provide a remedy, courts will waive exhaustion. *See Cave v. E. Meadow Union Free Sch. Dist.*, 514 F.3d 240, 249 (2d Cir. 2008) ("The exhaustion requirement is excused when exhaustion would be futile because

the administrative procedures do not provide an adequate remedy."), *abrogated on other grounds by Luna Perez v. Sturgis Pub. Schs.*, 598 U.S. 142 (2023).

24. Here, pursuing further administrative process would be futile and provide Petitioners no remedy. Under Agency regulations, a detained child has the right to an administrative risk-determination hearing "to determine . . . whether the unaccompanied child would present a risk of danger to self or to the community if released." 45 C.F.R. § 410.1903(b). However, such hearings "cannot be used to determine whether an unaccompanied child has a suitable sponsor" and "will not compel an unaccompanied child's release." *Id.* § 410.1903(i), (j). Regardless of the outcome of the risk-determination review, a child's release remains subject to ORR's sponsorship determination. *See id.* § 410.1903(j) ("[A]n unaccompanied child may not be released unless ORR identifies a safe and appropriate placement . . . ."); Unaccompanied Children Program Foundational Rule, 89 Fed. Reg. 34384, 34569–70 (Apr. 30, 2024) ["Foundational Rule"] (explaining that the adjudicator at a risk-determination hearing "is unable to order the release or change in placement of an unaccompanied child" because "[p]lacement and release decision-making authority is vested in the Director of ORR"); *see also Flores v. Rosen*, 984 F.3d 720, 733 (9th Cir. 2020) (explaining that even a favorable result in a "bond hearing" under the *Flores* Settlement Agreement does not result in release from custody).

25. Because no administrative process is available that would afford Petitioners the relief they seek, exhaustion would be futile. Accordingly, the prudential exhaustion doctrine is no barrier to Petitioners' habeas claims, and the Court must adjudicate them. *See Beharry*, 329 F.3d at 62; *Araujo Cortes*, 35 F. Supp. 3d at 538.

STATEMENT OF FACTS

24. Eskarh is a 13-year-old child who was born in [redacted]. He entered the United States on January 31, 2026 with his sibling Pepe and was designated an "unaccompanied child." He has a fear of return to [redacted] and a pending application for asylum.

25. Pepe is a 9-year-old child who was born in [redacted]. He entered the United States on January 31, 2026 with his sibling Eskarh and was designated an "unaccompanied child." He has a fear of return to [redacted] and a pending application for asylum.

26. [redacted]

27. Petitioners entered ORR custody on or about February 2, 2026. ORR transferred Petitioners to Abbott House on or about April 8, 2026, and the children have remained at that placement since. As such, Petitioners have been in ORR custody for just shy of 180 days.

28. Petitioners were each served with a Notice to Appear, charging them as inadmissible, on February 1, 2026. The New York Varick Immigration Court subsequently terminated the removal proceedings against both Petitioners on July 7, 2026.

29. Petitioners timely filed applications for asylum on Form I-589 on June 17, 2026. Both Petitioners requested asylum on the basis that [redacted]

30. In notices dated July 2, 2026, the New York Asylum Office scheduled Petitioners for asylum interviews on August 10, 2026. Both Petitioners filed requests to reschedule (i.e.,

postpone) their asylum interviews via postal mail on July 16, 2026. Those requests remain pending.

31. Eskarh and Pepe's biological mother, [redacted], is 33 years old and lives in Rhode Island. She is ready and able to care for her children and has sought their release since they were taken into ORR custody. Ms. [redacted] has complied with ORR's sponsorship application process.

32. Ms. [redacted] applied with ORR to serve as Petitioners' sponsor in March 2026. Since then, she has been working with an ORR FFS who was assigned to assist her in collecting the documents required to process this application, and this sponsorship application was deemed Category 1 priority for reunification. *See* Off. of Refugee Resettlement, Admin. for Child. & Fams., U.S. Dep't of Health & Hum. Servs., Unaccompanied Alien Children Bureau Policy Guide § 2.2.1 (last accessed July 30, 2026) ["ORR Policy Guide"], https://tinyurl.com/mu7uz228.

33. Ms. [redacted]'s first sponsor application was submitted on March 18, 2026, along with the birth certificates for both children and her identification documents, which included her [redacted] passport and her Employment Authorization Document.

34. Sponsor fingerprints were completed on March 25, 2026.

35. The initial home study took place on April 24, 2026. This yielded a negative home study report dated May 1, 2026, due to a household member's property and prior actions, both previously unknown to Ms. [redacted] To rectify this, Ms. [redacted] swiftly moved to a new apartment, at significant personal expense, and found a new Alternate Caregiver as soon as she could.

36. DNA testing for this sponsorship was completed on May 8, 2026. On May 12, 2026, DNA testing confirmed parentage.

37. On June 2, 2026, Ms. [redacted] notified ORR personnel that she had moved to a new home and that a family friend had agreed to be the new Alternate Caregiver.

38. In mid-June, Ms. [redacted] tried contacting the then-assigned Division of Sponsor Administration ("DSA") FFS several times but received no response. Receiving no response for several days, she reached out to the care program. The case manager sent an email to the DSA FFS and received an out-of-office reply. Ms. [redacted] was able to speak with the DSA FFS after about a week.

39. On or around June 17, 2026, Ms. [redacted] began experiencing technical difficulties with the online portal provided by the DSA FFS. She spoke with the DSA FFS and was provided a new link. However, that new link also did not work, and she was not able to submit the pending documents. Ms. [redacted] reached out to the DSA FFS but received no response for several days. Abbott House personnel also tried reaching out to the DSA FFS and similarly received no response.

40. A June 26, 2026, a case review by DSA FFS noted that Ms. [redacted]'s sponsor application had technical issues and that she had emailed ORR to get it fixed.

41. On or around July 6, 2026, the technical issue with the sponsor application was resolved by ORR, and Ms. [redacted] was able to upload the remaining documentation. Ms. [redacted]'s updated sponsor application was submitted on July 7, 2026.

42. During a July 14, 2026 staffing, it was shared that the only pending item needed to request a home study addendum was a completed Authorization for Release of Information (ARI) for the Alternate Caregiver. FFS Mariana Valdez stated during this

staffing that there was a glitch in the system, and that some documents appeared in the portal but could not be opened. She said ORR was aware of the issue and working on it.

43. The Alternate Caregiver submitted their United States passport and Social Security Card as their identification on July 16, 2026 and completed fingerprinting on July 17, 2026.

44. On July 27, 2026, a second home study visit was completed. The findings are pending.

45. Ms. [redacted] has complied at every step of the sponsor-vetting process and submitted numerous documents to substantiate her qualifications, including verifying her income and submitting to a home study. Since she submitted her sponsor application in April 2026, ORR has requested extensive additional documentation to demonstrate her suitability as Petitioners' sponsor. The process itself was convoluted, and it was administered in piecemeal fashion, such that Ms. [redacted] would submit evidence and then—after she complied—ORR would demand more and then more evidence still.

46. Nevertheless, Ms. [redacted] did everything possible to comply. For example, she submitted a range of documentary evidence showing (i) that she does not have a criminal history; (ii) proof of income; (iii) proof of address; (iv) U.S.-government-issued identification cards for her; and (v) proof that she has an Individualized Tax Identification Number ("ITIN").

47. Ms. [redacted] has also complied with other intrusive forms of vetting. This includes undergoing an in-person sponsor interview with DHS and a fingerprints-based background check. She has submitted to DNA testing and allowed Respondents to inspect her home.

48. When Respondents inspected her home and raised concerns in their subsequent communication, Ms. [redacted] at her own expense located and moved into a two-bedroom

apartment as quickly as practicable, submitting thereafter to Respondents' proof of her new address.

49. In the midst of these demands, Ms. [redacted] has maintained contact with her children, periodically traveling over 12 hours each way to visit them in ORR custody and regularly calling them via videochat.

50. On July 30, 2026, Petitioners' federally appointed child advocate from the Young Center filed a Best Interests Determination ("BID") with ORR, advising that it was in the Petitioners' best interests to be released to their mother and expressing concern regarding Petitioners' long period of detention. As exhaustively detailed in the BID:

> Throughout the length of this case, Petitioners' mother has consistently responded to messages and calls, complied with requests, and submitted requested documents as possible. Her persistent engagement exemplifies her unwavering commitment and dedication to reunifying with her children. As she collaborated with ORR staff to reunite with her children, ORR staff went on vacation without notifying her, often leaving her messages and calls unanswered. Additionally, there were technical difficulties with the ORR online sponsor application. Petitioners' mother sent several screenshots to the then-assigned DSA FFS as evidence of the malfunction. In several staffings, the program shared that the DSA FFS was elevating the technical issues within ORR. For approximately 20 days, Petitioners' mother was unable to submit required documentation through no fault of her own, but rather due to ORR's technical difficulties. This family's separation was extended by these 20 days because the online sponsor application malfunctioned.

51. Neither Petitioners' Case Manager nor ORR personnel have raised concerns, like a criminal or child-protection history, identified in Ms. [redacted]'s background. Neither have they alleged that Ms. [redacted]'s identity is unconfirmed or that she is not the children's biological mother. In fact, no official involved in the sponsor-vetting processes has indicated that Ms. [redacted] is not a suitable sponsor or that she is unable to provide for her children's physical and mental wellbeing. They have also never raised concerns that either child poses a risk to himself or to anyone else.

52. As of the date of this filing, there is no outstanding evidence preventing reunification of Petitioners with their mother. Per the BID provided by the Young Center, Petitioners' best interests align with their desires for reunification, and immediate release is indicated.

RELEVANT LEGAL FRAMEWORK

53. An unaccompanied noncitizen[2] child is a person who (i) "has no lawful immigration status in the United States"; (ii) "has not attained 18 years of age"; and (ii) for whom either "there is no parent or legal guardian in the United States" or "no parent or legal guardian in the United States is available to provide care and physical custody." 6 U.S.C. § 279(g)(2). Over the past 25 years, several pieces of federal legislation have progressively reformed the treatment of unaccompanied children under the nation's immigration laws, born of "Congress's unmistakable desire to protect that vulnerable group." *D.B. v. Cardall*, 826 F.3d 721, 738 (4th Cir. 2016). As a result, these "most vulnerable immigrants" rightfully enjoy enhanced substantive and procedural protections to "fulfill[] our nation's 'special obligation to ensure that these children are treated humanely and fairly.'" *Flores v. Sessions*, 862 F.3d 863, 880 (9th Cir. 2017) (quoting 154 Cong. Rec. S10886 (daily ed. Dec. 10, 2008)).

I. ORR's responsibility for the care and custody of unaccompanied children

[2] While Congress uses the word "alien" to refer to noncitizens present in the United States, that term "has been recognized as . . . archaic and dehumanizing," and some courts have abandoned its use in favor of the neutral and more accurate term "noncitizen." *See, e.g.*, *Williams v. Garland*, 59 F.4th 620, 624 n.1 (4th Cir. 2023) (internal quotation marks omitted).

54. Congress has charged ORR with "coordinating and implementing the care and placement of unaccompanied . . . children." *Id.* § 279(b)(1)(A). This includes "ensuring that the interests of the child are considered" and "making placement determinations for all unaccompanied . . . children who are in Federal custody." *Id.* § 279(b)(1)(B)–(C).

55. Two acts of Congress provide the primary statutory framework governing ORR's responsibilities with respect to unaccompanied children—the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135, and the Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), Pub. L. No. 110-457 122 Stat. 5044.

56. With the Homeland Security Act, Congress transferred responsibility for the care and custody of unaccompanied children to ORR from the former Immigration and Naturalization Service ("INS"). *See* 6 U.S.C. § 279(a). This reorganization of responsibilities reflected Congress determination that the former INS's law-enforcement functions were incompatible with the role of caring for, and determining the interests of, children without parental protection. *See* 126 Cong. Rec. S9669 (daily ed. Oct. 1, 2002) (statement of Sen. Dianne Feinstein) (noting that ORR "has real expertise in dealing with both child welfare and immigration issues"); Foundational Rule, 89 Fed. Reg. at 34423 (acknowledging that ORR "is not a law enforcement agency, unlike the former INS").

57. Congress's next intervention, via the 2008 TVPRA, reaffirmed ORR's responsibility for the care and custody of unaccompanied children. *See* 8 U.S.C. § 1232(b)(1). The TVPRA directs all federal agencies to place unaccompanied children in ORR's care within 72 hours of encountering them. *Id.* § 1232(b)(3). Once an unaccompanied minor arrives in ORR custody, the TVPRA charges the Agency with promptly placing the child in the least-restrictive available setting, consistent with the child's best interests. *Id.* §

1232(c)(2)(A). The statute creates a presumption of family reunification and imposes barriers to placement in a secure facility, reserving the latter for children who are a danger to themselves or others or have been charged with a criminal offense. *See id.*

58. In 2024, ORR promulgated the Foundational Rule "to codify policies, standards, and protections for the [Unaccompanied Children] Program, consistent with the HSA and TVPRA," Foundational Rule, 89 Fed. Reg. at 34385, and "to establish comprehensive regulations governing programs for unaccompanied children," *Cmty. Legal Servs. in East Palo Alto v. U.S. Dep't of Health & Hum. Servs.*, 780 F. Supp. 3d 897, 909 (N.D. Cal. 2025), *appeal filed*, No. 25-2808 (9th Cir. May 1, 2025). The Foundational Rule establishes procedures for family reunification, consistent with the Agency's "strong belief . . . that placement with a vetted and approved family member . . . , as opposed to continued placement in an ORR care provider facility, is generally in the best interests of unaccompanied children." Foundational Rule, 89 Fed. Reg. at 34440.

59. The Foundational Rule creates a set of "policies and procedures . . . to release, without unnecessary delay, . . . unaccompanied child[ren] from ORR custody to a vetted and approved sponsor." *Id.* at 34591 (codified at 45 C.F.R. § 410.1200). This includes a formal regulatory duty to "make . . . prompt and continuous efforts . . . towards family unification and the release of . . . unaccompanied child[ren]." *Id.* at 34592 (codified at 45 C.F.R. § 410.1203(a)). In furtherance of these efforts, ORR imposed upon itself a mandatory duty to "release . . . child[ren] from its custody without unnecessary delay," provided (i) a suitable sponsor is available and (ii) the child is neither a flight risk nor a danger to self or others. *Id.* at 34591 (codified at 8 C.F.R. § 410.1201(a)). These

regulatory provisions remain in effect and bind the Agency's actions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

II. Manipulation of the sponsor-vetting process and attendant reunification delays

60. Beginning in early 2025, the government began to issue policy changes that increase the burden on proposed sponsors and impose additional barriers to the successfully release and reunification of detained unaccompanied children. These changes include:

- On February 14, 2025, ORR began requiring a fingerprint-based background investigation of all sponsors, adult household members, and backup adult caregivers. *See* Off. of Refugee Resettlement, Admin. for Child. & Fams., U.S. Dep't of Health & Hum. Servs., Field Guidance #26: Fingerprint Background Checks and Acceptable Supporting Documentation for a Family Reunification Application (Feb. 14, 2025), https://tinyurl.com/28n3h53x.
- On March 7, 2025, ORR eliminated certain forms of identification—including foreign passports, birth certificates, and national ID cards—from its list of acceptable proof of sponsor identity. *Angelica S. v. U.S. Dep't of Health and Hum. Servs.*, 786 F. Supp. 3d 158, 168, 171 (D.D.C. 2025).
- On March 14, 2025, ORR began requiring DNA collection and testing "to support proof of relationship" in any instance "where a sponsor purports to be biologically related to the child." *See* Off. of Refugee Resettlement, Admin. for Child. & Fams., U.S. Dep't of Health & Hum. Servs., Field Guidance #27: DNA Testing Expansion (Mar. 14, 2025), https://tinyurl.com/4uw63vtx.
- On March 25, 2025, ORR amended the Foundational Rule to eliminate a provision specifying that the Agency would neither disqualify prospective sponsors based on

immigration status alone nor collect or share sponsors' immigration status for law-enforcement purposes. *See* Unaccompanied Children Program Foundational Rule; Update to Accord with Statutory Requirements, 90 Fed. Reg. 13554, 13554 (Mar. 25, 2025) (eliminating 45 CFR 410.1201(b)).

- On April 15, 2025, ORR began requiring potential sponsors to provide proof of income in several specific forms: the prior year's tax returns, recent paystubs, or an employer letter verifying employment and salary. *Angelica S.*, 786 F. Supp. 3d at 168.
- On July 9, 2025, ORR began requiring prospective sponsors to appear for identity verification at in-person interviews where "federal law enforcement agencies may be present to meet their own mission objectives, which may include interviewing sponsors." Valerie Gonzalez, *Trump Administration Requiring ICE Interviews for Parents Hoping to Reunite with Children Who Entered U.S. Alone*, PBS News (Sept. 2, 2025), https://tinyurl.com/5b6fakw3. Under this arrangement, ICE officials conducted arrests of parents seeking custody of their children, sparking fear among would-be sponsors. *Id.*
- Effective July 14, 2025, ORR expanded the home-study requirement to situations not mandated by statute, including for certain sponsors who decline DNA testing and for legal guardians and immediate relatives who are not biological relatives. *See* ORR Policy Guide, Record of Posting and Revision Dates (last accessed July 31, 2026), https://tinyurl.com/2j559vpw.
- On February 27, 2026, ORR began requiring all potential sponsors, adult household members, and alternate caregivers to provide proof of a Social Security Number or Individual Tax Identification Number. *See id.*

61. Several of ORR's new policies—namely the March 7, 2025 identification requirements and April 15, 2025 income-verification requirements—remain under injunction for children admitted to ORR custody on or before April 22, 2025. *See Angelica S.*, 786 F. Supp. 3d at 176, 178–79. Another court with occasion to review ORR's new demands of prospective sponsors concluded that they constitute "a gross weaponization of the ORR process to further this administration's immigration enforcement efforts." *E.F.E.L. v. Noem*, No. 26-cv-2507, 2026 WL 1045550, at *5 (N.D. Ill Apr. 17, 2026). And yet other courts have found that, where they result in delay, ORR's new vetting procedures are incompatible with due process. *See I.T. ex rel. B.V.T.R. v. Kennedy*, No. 26-cv-2563, 2026 WL 882917, at *2 (S.D.N.Y. Mar. 31, 2026); *M.A. v. Molina*, No. 26-cv-415, 2026 WL 741623, at *8 (N.D. Ohio Mar. 17, 2026)

62. Nevertheless, ORR's onerous new sponsor-vetting policies have slowed the reunification process almost to a halt. Over the past year, the time between a child entering ORR custody and achieving reunification "has increased dramatically"—rising by a factor of six—"from one month to now six months." *Marroquin Alvarez v. Genalo*, No. 26-cv-2250, 2026 WL 1206212, at *2 (S.D.N.Y. May 4, 2026). In fact, by May 2026, the average number of days in custody before release rose to 206, almost *seven* times the average stay under the prior presidential administration. *Compare* Off. of Refugee Resettlement, Admin. for Child. & Fams., U.S. Dep't of Health & Hum. Servs., Average Monthly Data (last accessed July 31, 2026) ["ORR Monthly Data"], https://acf.gov/orr/about/ucs/facts-and-data, *with* Mica Rosenberg et al., *ICE Sent 600 Immigrant Kids to Detention in Federal Shelters This Year. It's a New Record*, ProPublica (Nov. 24, 2025), https://tinyurl.com/5rtbpe8t.

63. Children who are "erroneously institutionalized during their formative years may bear the scars for the rest of their lives." *J.R.*, 442 U.S. at 628 (Brennan, J., concurring). Even "a short detention can . . . caus[e] psychological trauma and induce long-term depression, anxiety and [post-traumatic stress disorder]." *L.V.M. v. Lloyd*, 318 F. Supp. 3d 601, 618 (S.D.N.Y. 2018) (cleaned up). Indeed, when average detention times increased in 2018, ORR staff noted "higher levels of defiance, hopelessness, and frustration among children, along with more instances of self-harm and suicidal ideation." Off. of Inspector Gen., U.S. Dep't of Health & Hum. Servs., *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody* (Sept. 3, 2019), https://tinyurl.com/ms7w2pvs. These harms are yet more severe for young children. *Lucas R. v. Becerra*, No. 18-cv-5741, 2022 WL 2177454, at *17 (C.D. Cal. Mar. 11, 2022).

64. Clinicians and healthcare practitioners continue to highlight the potentially crippling effects of prolonged detention on the psychological development of asylum seekers like Eskarh and Pepe. *See* Mares, S., & Ziersch, A. (2024). *How immigration detention harms children: A conceptual framework to inform policy and practice. Psychological Trauma: Theory, Research, Practice, and Policy, 16*(Suppl 2), S367–S378 (annexed hereto as an Exhibit in support); *see also* Sarah A. MacLean, et al., *Mental Health of Children Held at a United States Immigration Detention Center*, Social Science & Medicine, Volume 230, 2019, at 303–08, (annexed hereto as an Exhibit in support).

III. Government attempts to undermine the rights of detained children

65. Since 2025, the government has taken drastic and unprecedented steps to diminish the protections afforded to unaccompanied children under the TVPRA and the Foundational

Rule. First, in March 2025, the government abruptly terminated a federal contract for legal services to unaccompanied children "for the Government's convenience." *Cmty. Legal Servs. in East Palo Alto*, 780 F. Supp. 3d at 909. In an April 29, 2025 order, the District Court for the North District of California restored the funding, enjoining the contract termination as a violation of the TVPRA, 8 U.S.C. § 1232(c)(5), and the Foundational Rule, 45 C.F.R. § 410.1309(a)(4), which mandate the provision of legal services for children in and released from ORR custody, where appropriations are available. *Cmty. Legal Servs. in East Palo Alto*, 780 F. Supp. 3d at 927.

66. The court's order notwithstanding, the government has persisted in its efforts to end legal services for vulnerable noncitizen children. Beginning in December, the government stopped making payments under the restored legal-services contract, unlawfully accruing arrears of some 65 million dollars. *See* Roque Planas, *Trump Administration to Let Contract Aiding Unaccompanied Minors Expire*, The Guardian (July 30, 2026), https://tinyurl.com/p45z78rc. As a result, one large subcontractor, whom the government owes 20 million dollars in unpaid legal fees, withdrew from the contract because of cash-flow issues. *See id.* Barring an unexpected change, the ORR legal-services contract will end today, leaving 20,000 unaccompanied children without legal representation. *See* Press Release, Acacia Center for Justice, Acacia Center for Justice Reaffirms Our Commitment to Unaccompanied Children (July 30, 2026), https://tinyurl.com/3vav64sb.

67. Immigration officials have also taken steps to skirt the immigration laws and expel detained children without required process. *See L.G.M.L. v. Noem*, 800 F. Supp. 3d 100, 123–29 (D.D.C. 2025). Near midnight on August 30, 2025, ORR and immigration officials roused 327 detained children from their beds, drove them to the airport, and

loaded some onto planes—all part of scheme to surreptitiously "return them to [redacted] without following the procedures described in the TVPRA." *Id.* at 109, 119. Only an emergency district-court order, granted at 4:30am on a holiday weekend, prevented the government from carrying out this conspiratorial and plainly unlawful circumvention of due process. *Id.* at 114.

68. Though thwarted in their first attempt, the government may again try to expel detained children *en masse* and in violation of their rights. On June 24, 2026, Senator Ron Wyden wrote to Respondent Kennedy to express alarm regarding his receipt of "credible information that [HHS] . . . is utilizing a list of over 500 unaccompanied children currently in the care and custody of [ORR] as targets for expedited removal under an unprecedent legal framework." Letter from Ron Wyden, U.S. Senator, to Robert F. Kennedy, Jr., HHS Secretary (June 24, 2026), https://tinyurl.com/3e2s3umu. This "imminent threat to . . . children's safety and legal rights" still lingers. *Id.*

69. What is more, public reporting suggests that the government may try to replace the expiring legal-services contract with an arrangement with the Texas Attorney General's office or another similar agency in that state. *See* Lomi Kriel, *Trump Administration Asks Texas for Help Providing Legal Services to Immigrant Kids Facing Deportation*, The Texas Tribune (July 3, 2026), https://tinyurl.com/32up8z8v. Attorneys and advocates for unaccompanied children fear that the government's confirmed overtures to Texas officials may foretell "a broader effort to transfer unaccompanied minors to the state, from where it is easier to quickly deport them." *Id.* Such a move could come as early as tomorrow, when nearly 1,800 detained children could lose access to counsel. *See* ORR

Monthly Data, https://acf.gov/orr/about/ucs/facts-and-data (reflecting 1,796 children in custody during the month of June).

IV. Particularized risk of harm faced by transgender children

70. If transferred to Texas, as the foregoing evidence suggests is likely, Petitioners—both of whom are transgender or gender nonconforming—would confront the threat of severe harms not faced by their cisgender[3] peers.

71. Transgender individuals residing in Texas are presently under siege by the state government. In just the prior three years, the Texas legislature and executive agencies have:

- Fully prohibited the provision of medically necessary treatment, including mental-health care, for gender dysphoria in children; *see* S. 14, 88th Leg., Reg. Sess. (Tex. 2023); *State v. Loe*, 692 S.W.3d 215, 239 (Tex. 2024) (upholding the statute as constitutional);
- Changed Department of Public Safety rules to prevent transgender people from obtaining a driver license, even with a court order, that accurately reflects their gender identity, *see* Pooja Salhotra, *Transgender Texans Blocked From Changing Their Sex on Their Driver's License*, The Texas Tribune (Aug. 21, 2024), https://tinyurl.com/yx2h5dp9;
- Required Texas school boards to implement policies barring staff from assisting any student with social transition, *see* S. 12, 89th Leg., 2d Reg. Sess. (Tex. 2025);

[3] The term "cisgender" refers to individuals "whose gender identity—or their deeply felt, inherent sense of their gender—aligns with their sex-assigned-at-birth." *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 594 (4th Cir. 2020).

- Barred transgender people from using multi-occupancy bathrooms that align with their identities in schools and government-owned buildings, *see* S. 8, 89th Leg., 2d Spec. Sess. (Tex. 2025) ("Texas Women's Privacy Act");
- Mandated that incarcerated individuals in state custody be housed according to their "biological sex," *see id.*;
- Reestablished the legal authority to pursue child-abuse investigations against parents who support their children in accessing gender-affirming care, *see* Terri Langford, *Texas Child Abuse Investigations Over Gender-Affirming Care No Longer Blocked*, The Texas Tribune (Apr. 24, 2026), https://tinyurl.com/2f9rtdxz; and
- Secured a legal settlement from Texas Children's Hospital to create a fully funded "detransition clinic" to promote the reversal of medically necessary gender-affirming care, *see* Terri Langford & Colleen Deguzman, *Texas Children's Hospital Must Create Country's First "Detransition Clinic" Under Legal Settlement With State, The Texas Tribune* (May 15, 2026) https://tinyurl.com/9rrp7neu.

72. This torrent of persecutory state action against trans Texans, and trans children in particular, is an attempt to eradicate trans people from public life in the state. This state of affairs has compelled one transgender legal analyst to issue a "Do Not Travel" warning, covering the entire state of Texas, for trans individuals. *See* Erin Reed, *Anti-Trans National Legal Risk Assessment Map: July 2026*, Erin in the Morning (July 13, 2026), https://tinyurl.com/a7sd54ah. Of note, in Reed's analysis, New York is one of the safest states for transgender individuals, in part because of robust protections under state and local civil-rights laws. *See id.*

73. But in Texas, where the state continues to leverage its full weight against gender nonconforming individuals, trans people are suffering lethal violence at alarming rates, with at least three trans people murdered in the state in 2024. *See* Hum. Rts. Watch, *Fatal Violence Against the Transgender and Gender-Expansive Community in 2024* (last accessed July 31, 2026), https://tinyurl.com/4a8967yy. And just two months ago, another trans women was found murdered in Houston. *See* Quispe López, *Man Charged with Murder Over Killing of Trans Woman Persia Amarra Conway in Houston*, them (June 12, 2026), https://tinyurl.com/3dvnnahj.

CAUSES OF ACTION

COUNT I:
VIOLATION OF PROCEDURAL DUE PROCESS

74. Petitioners restate and reallege all preceding paragraphs as if fully set forth herein.

75. Perhaps no individual interest merits greater protection under the Fifth Amendment's Due Process Clause than deprivations of liberty. *See Boumediene v. Bush*, 553 U.S. 723, 739 (2008) ("The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty."); *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects.").

76. Civil detention "for any purpose constitutes a significant deprivation of liberty that requires due[-]process protection." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (quoting *Jones v. United States*, 463 U.S. 354, 361 (1983)). The Supreme Court has thus authorized deprivations of liberty, other than as punishment for a crime, only "in certain narrow circumstances," *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997), "where a special justification" outweighs the individual liberty interest, *Zadvydas*, 533 U.S. at 690.

77. A child's interest in freedom from arbitrary or unnecessary confinement is equal to that of an adult. *See J.R.*, 442 U.S. at 600 ("[A] child, in common with adults, has a substantial liberty interest in not being confined unnecessarily."); *Application of Gault*, 387 U.S. 1, 13 (1967) ("[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone."); *Reno v. Flores*, 507 U.S. 292, 316 (1993) (O'Connor, J., concurring) (explaining that "a child's constitutional '[f]reedom from bodily restraint' is no narrower than an adult's" (quoting *Foucha*, 504 U.S. at 80)); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1195 (N.D. Cal. 2017) ("[M]inors are not adults, and thus are always in some form of custody, [but] they retain a strong interest in being free from unnecessary government interference with their liberty.").

78. Children's liberty interests under the Due Process Clause extend to the "right to the preservation of family integrity." *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977); *accord Santosky v. Kramer*, 455 U.S. 745, 753 (1982) ("[F]reedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment."). As such, without adequate process, the government may not "dislocate[children] from the 'emotional attachments that derive from the intimacy of daily association[]' with the parent." *Id.* (quoting *Smith v. Org. of Foster Fams. for Equal. & Reform*, 431 U.S. 816, 844 (1977)).

79. Courts in the Second Circuit determine the adequacy of process in the context of civil immigration enforcement with reference to the longstanding *Mathews* balancing framework. *See Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). The *Mathews* factors are: (i) the private interest affected by government action; (ii) the risk of erroneous deprivation through existing procedures and the likely value of additional or

substituted safeguards; and (iii) the government's interest, including the burden of additional procedural requirements. 424 U.S. at 335. By weighing these factors together, courts assess whether to impose judicial procedures to protect the individual liberty interest at stake. *Id.* at 348.

80. In this case, Petitioners' interest in freedom from confinement and family unity are among the weightiest of constitutional liberties. *See Zadvydas*, 533 U.S. at 690; *Duchesne*, 566 F.2d at 825. The risk of erroneous deprivation is severe because Respondents have provided Petitioners no constitutionally adequate process *at all*. *See Schweiker v. McClure*, 456 U.S. 188, 195 (1982) ("[D]ue process demands impartiality on the part of those who function in judicial or quasi-judicial capacities."). Moreover, the ongoing deprivation of liberty exposes Petitioners to "the traumatic, adverse effect on adolescent neurological development of prolonged custody in an institutional setting." *J.E.C.M. v. Marcos*, 689 F. Supp. 3d 180, 202–03 (E.D. Va. 2023). Finally, the government's interest in continuing to detain Petitioners is minimal because it has alleged neither that the children's mother is incapable of providing for their physical and mental well-being nor that Petitioners present a danger to themselves, a danger to the community, or a flight risk. *Cf.* 8 U.S.C. § 1232(c)(2)(A), (3)(A); *Saravia v. Sessions*, 905 F.3d 1137, 1142 (9th Cir. 2018) (indicating that, where "ORR has previously determined that [an unaccompanied child is] neither dangerous nor pose[s] a flight risk, . . . the TVPRA . . . mandate[s] placement with a suitable sponsor").

81. For these reasons, Respondents' continued detention of Petitioners violates the Due Process Clause of the Fifth Amendment.

COUNT II:

VIOLATION OF SUBSTANTIVE DUE PROCESS

82. Petitioners restate and reallege all preceding paragraphs as if fully set forth herein.

83. The substantive component of the Due Process Clause "forbids the government to infringe certain fundamental liberty interests *at all*, no matter what process is provided." *Flores*, 507 U.S. at 302 (emphasis in origin; internal quotation marks removed). This includes government conduct that is "egregious," "outrageous," and "shock[s] the contemporary conscience." *Velez v. Levy*, 401 F.3d 75, 93 (2d Cir. 2005) (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998)). If "the Due Process Clause would not countenance it even were it accompanied by full procedural protection," the claim sounds in substantive due process. *Southerland v. City of New York*, 680 F.3d 127, 152 (2d Cir. 2012). In this manner, "substantive due process protects against government power arbitrarily and oppressively exercised." *Ms. L. v. U.S. Immigr. & Customs Enf't*, 302 F. Supp. 3d 1149, 1166 (S.D. Cal. 2018).

84. The Second Circuit has long recognized that families have "a substantive right under the Due Process Clause 'to remain together without the coercive interference of the awesome power of the state.'" *Tenenbaum v. Williams*, 193 F.3d 581, 600 (2d Cir. 1999) (quoting *Duchesne*, 566 F.2d at 825)). Indeed, the right to family integrity is "perhaps the oldest of the fundamental liberty interests recognized by" the Supreme Court. *Troxel v. Granville*, 530 U.S. 57, 65 (2000). As a result, deprivations of this compelling liberty interest are "actionable on a substantive due process theory." *Southerland*, 680 F.3d at 152.

85. Only a "compelling governmental interest in the protection of minor children" can justify government interference with the right to family integrity. *Id.* Even then, courts permit only a brief period of family separation without intervening judicial process. *See*

Southerland, 680 F.3d at 153 (approving the temporary removal of children from their parents only "a post-removal judicial proceeding is promptly held"); *Kia P. v. McIntyre*, 235 F.3d 749, 759 (2d Cir. 2000) (holding that the Constitution allows the government to interrupt the child-parent relationship for "a short time—a day or two" while considering whether new information casts doubt on the parent's fitness).

86. District courts have repeatedly held that immigration authorities' practice of separating children from their parents and refusing to reunify them, absent evidence of parental unfitness, is a probable violation of substantive due process. *See, e.g.*, *D.J.C.V. v. United States*, 605 F. Supp. 3d 571, 594–95 (S.D.N.Y. 2022) (collecting cases); *Jacinto–Castanon de Nolasco v. U.S. Immigr. & Customs Enf't*, 319 F. Supp. 3d 491, 499 (D.D.C. 2018) ("easily conclud[ing]" that a noncitizen plaintiff, whose son the government detained separately in an ORR facility, was likely to succeed on her "substantive due process claim that the[] continued separation . . . violate[d] the[] right to family integrity . . . ."); *M.G.U. v. Nielsen*, 325 F. Supp. 3d 111 (D.D.C. 2018) (same).

87. Here, Respondents have infringed Petitioners' right to family integrity and reunification with their mother despite no showing—indeed, any evidence at all—of parental unfitness. Because this deprivation has extended far beyond a brief investigatory period, it shocks the conscience and amounts to a violation of Petitioners' substantive rights under the Due Process Clause. *See Southerland*, 680 F.3d at 153; *Velez*, 401 F.3d at 93.

COUNT III:

VIOLATION OF SECTION 235 OF THE TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT (8 U.S.C. § 1232)

88. Petitioners restate and reallege all preceding paragraphs as if fully set forth herein.

89. Section 235 of the TVPRA imposes on Respondents an obligation to swiftly discharge their duties with respect to unaccompanied minors. *See* 8 U.S.C. § 1232(b)–(c). Indeed, the statutory scheme makes rapidity as essential a component of ORR's duties as protecting the safety of the children in the Agency's custody. *See J.E.C.M.*, 689 F. Supp. 3d at 199 ("ORR not only has a statutory mandate to consider the safety of [unaccompanied children] when making placement determinations, but it also has a mandate to make these placements 'promptly.'" (quoting 8 U.S.C. § 1232(c)(2)(A))).

90. Under the TVPRA, federal officials must conduct a transfer to HHS custody "*not later than 72 hours* after determining that [a] child is an unaccompanied . . . child." 8 U.S.C. § 1232(b)(3) (emphasis added). In concert with DHS, HHS must "make a *prompt* determination" of an unaccompanied child's age. *Id.* § 1232(b)(4) (emphasis added). And once an unaccompanied minor is properly in ORR custody, the Agency must ensure the child is "*promptly placed* in the least restrictive setting that is in the best interest of the child." *Id.* § 1232(c)(2)(A) (emphasis added). The latter provision generally entails expeditious release to a "suitable" family member or other sponsor. *See id.*; *Saravia*, 905 F.3d at 1142.

91. In this case, Respondents have failed to promptly place Petitioners in the least-restrictive setting that is in their best interests—at home with their mother. Ms. [redacted] is a "suitable family member" who "is capable of providing for the child[ren's] physical and mental well-being." 8 U.S.C. § 1232(c)(2)(A), (3)(A). Indeed, there is no evidence that Respondents contend otherwise. By prolonging Petitioners' detention, unnecessarily and without explanation, Respondents have violated Section 235 of the TVPRA.

COUNT IV:

VIOLATION OF UNACCOMPANIED CHILDREN PROGRAM FOUNDATIONAL RULE (45 C.F.R. PART 410) AND ORR UNACCOMPANIED CHILDREN BUREAU POLICY GUIDE

92. Petitioners restate and reallege all preceding paragraphs as if fully set forth herein.

93. Under the *Accardi* principle, "an administrative agency must adhere to its own regulations." *Singh v. U.S. Dep't of Justice*, 461 F.3d 290, 296 (2d Cir. 2006) (citing *Accardi*, 347 U.S. at 267. The doctrine's "ambit is not limited to rules attaining the status of formal regulations." *Montilla v. Immigr. & Naturalization Serv.*, 926 F.2d 162, 167 (2d Cir. 1991). Rather, "[w]here the rights of individuals are affected," agencies must follow their own internal procedures even if they "are possibly more rigorous" than promulgated regulations. *Morton v. Ruiz*, 415 U.S. 199, 235 (1974).

94. Within the Second Circuit, a noncitizen generally need not show prejudice to make out an *Accardi* claim. *Montilla*, 926 F.2d at 169; *United States v. Schiller*, 81 F.4th 64, 71 n.7 (2d Cir. 2023) ("Where fundamental rights derived from the Constitution or federal statutes are implicated . . . a showing of prejudice is generally not required."). A noncitizen facing a deprivation of fundamental rights may state an *Accardi* claim simply by demonstrating that (i) the procedures exist for the noncitizen's benefit and (ii) the agency violated them. *Montilla*, 926 F.2d at 169.

95. ORR's Foundational Rule provides that the Agency "shall make and record . . . prompt and continuous efforts on its part towards family unification and the release of [any] unaccompanied child." 45 C.F.R. § 410.1203(a). Another provision obligates ORR to "adjudicate the completed sponsor application of a parent . . . within 10 calendar days of receipt . . . , absent an unexpected delay." *Id.* § 410.1205(b). The Agency then "shall release [the] child from its custody without unnecessary delay." *Id.* § 410.1201(a).

Moreover, the Rule designates "[a] parent" as the highest priority for release of detained unaccompanied children. Id. § 410.1201(a)(1).

96. ORR's corresponding sub-regulatory framework is the ORR Policy Guide, which "provides guidance . . . regarding the placement, care, and services provided to unaccompanied . . . children in ORR custody." ORR Policy Guide, Introduction. The ORR Policy Guidance implements and is "consistent with ORR's legal authorities," including the TVPRA, Homeland Security Act, and the Foundational Rule. *Id.*

97. Section 2 of the Policy Guide sets forth ORR's policies for releasing unaccompanied children in "a safe, efficient[] manner without unnecessary delay." *Id.* § 2.1. This portion acknowledges ORR's "duty to promptly place unaccompanied alien children in the least restrictive setting that is in the best interests of the child." *Id.* § 2.8.5. Section 2 also provides that ORR generally "adjudicates completed sponsor applications" for Category 1 sponsors "within **10 calendar days** of receipt." *Id.* § 2.7 (emphasis in original). Finally, after approving a sponsor, the care providers must ordinarily release the child "as quickly as possible (within 3 calendar days after ORR approves the release)." *Id.* § 2.8.2.

98. ORR's inefficient and dilatory handling of Petitioners' reunification case violates the Foundational Rule and Policy Guide. ORR has made neither "prompt" nor "continuous" efforts to release the children; has not timely adjudicated their mother's pending sponsor application; and has invited—not avoided—unnecessary delay. *Cf.* 45 C.F.R. §§ 410.1203(a), 410.1205(b); ORR Policy Guide §§ 2.1, 2.7, 2.8.5. Respondents' failure to follow their own policies, as defined in the ORR Foundational Rule and Policy Guide, are unlawful under the *Accardi* doctrine.

COUNT V:

VIOLATION OF ADMINISTRATIVE

PROCEDURE ACT (5 U.S.C. § 701 *ET SEQ.*)

99. Petitioners restate and reallege all preceding paragraphs as if fully set forth herein.

100. Under the Administrative Procedure Act, courts "shall . . . hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "contrary to constitutional right." 5 U.S.C. § 706(2)(A)–(B). Applying this provision, this Court has previously invalidated immigration agencies' attempts to detain or remove noncitizens where the action violates an applicable statute or regulation. *See e.g.*, *Munoz Materano v. Arteta*, 804 F. Supp. 3d 395, 422 (S.D.N.Y. 2025) (finding an APA violation and ordering the petitioner's release where his detention rested on DHS's unlawful revocation of his parole in violation of 8 U.S.C. § 1182(d)(5) and implementing regulations); *Calderon v. Sessions*, 330 F. Supp. 3d 944, 958 (S.D.N.Y. 2018) (same where detention implicated DHS's foreclosure of petitioner's regulatory right to seek a provisional waiver of unlawful presence).

101. Respondents' failure to honor Petitioners' constitutional, statutory, regulatory, and sub-regulatory rights by refusing or unnecessarily delaying their release to their mother is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law.

PRAYER FOR RELIEF

For the foregoing reasons, Petitioners respectfully request that this Court:

I. Assume jurisdiction over this matter;

II. Restrain Respondents, during the pendency of this litigation, from (i) transferring Petitioners outside the Southern District of New York and (ii) removing Petitioners from the United States;

III. Order Respondents, pursuant to 28 U.S.C. § 2243, to show cause within three days why this Court should not grant the Petition;

IV. Issue a Writ of Habeas Corpus ordering Respondents to (i) immediately release Petitioners to the custody and care of their mother and proposed sponsor, [redacted], without additional conditions of supervision or alternatives to detention and (ii) safely and expeditiously transport Petitioners to their mother's home in Rhode Island;

V. In the alternative, grant Petitioners release on bail, pending a full adjudication in this matter, pursuant to the Court's inherent authority as recognized in *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001);

VI. Declare that Petitioners' ongoing detention in Respondents' custody is unlawful and in violation of the U.S. Constitution, applicable statutes, and other law;

VII. Enjoin Respondents from further detaining Petitioners, from preventing or delaying their immediate release to their mother, and from again apprehending or detaining Petitioners without prior authorization of this Court;

VIII. Award Petitioners their costs and reasonable attorney fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and

IX. Grant such further relief as this Court deems just and proper.

Dated: July 31, 2026

Respectfully submitted,

/s/ Liam Lowery
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am one of Petitioners' attorneys, and I submit this verification on Petitioners' behalf because they are minor children. I have discussed with Petitioners and other members of their legal team the events and assertions detailed in this Petition. I hereby verify that the factual statements contained in this Petition are, to the best of my knowledge and belief, true and correct.

Dated: July 31, 2026

Respectfully submitted,

/s/ Matthew A. Johnson
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