

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

M.M.T.T.	)	
	)	
Petitioner,	)	
	)	Case No. 26-CV-9789
v.	)	
	)	Jeffrey I. Cummings
MARKWAYNE MULLIN, et al.,	)	United States District Judge
	)	
<u>Respondents.</u>	)	

**PETITIONER'S REPLY TO GOVERNMENT'S OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS**

COMES NOW M.M.T.T., the Petitioner, represented by his undersigned Pro Bono attorneys, and very respectfully replies to the Government's Opposition to his Petition for a Writ of Habeas Corpus.

I. Introduction

The government's opposition largely ignores the core issue in this case: M.M.T.T., a seventeen-year-old child, has been detained in government custody for approximately **ten months**, separated from his willing and able brother, in violation of the Trafficking Victims Protection Reauthorization Act's ("TVPRA") mandate for prompt release to the least restrictive setting in the child's best interest. 8 U.S.C. § 1232(c)(2)(A). Rather than grapple with the lawfulness of this prolonged detention, the government recites the steps of its own vetting process and asks this Court and the Petitioner to wait longer. But the government's own policies created the delay that has turned what should have been days of processing into ten months of institutional confinement.

The government admits that M.M.T.T.'s brother's sponsorship application is pending and progressing. But the government minimizes a critical fact: M.M.T.T.'s brother was required to

withdraw his initial application in February 2026 because he could not comply with the Office of Refugee Resettlement (“ORR’s”) newly created documentation requirements -- requirements that notably have never been subject to notice and comment -- specifically, the requirement that sponsors provide a Social Security Number (“SSN”) or Individual Taxpayer Identification Number (“ITIN”). That requirement did not exist when M.M.T.T. entered ORR custody in November 2025; it was the government’s own policy and unlawful changes -- the ORR New Document Policies—that forced M.M.T.T.’s brother to withdraw and start over.

After months of effort, M.M.T.T.’s brother obtained an ITIN in July 2026 and reopened his application. As of the date of this filing, the only remaining outstanding items -- in-person ID verification, DNA sample collection, and background check renewal -- are procedural steps entirely within ORR’s control.¹ The government should not be rewarded for its own delays. Nor should this Court permit the government to use the pendency of an application it has continuously delayed as a reason to further detain a child. For the reasons set forth below, this Court should grant the petition and order M.M.T.T.’s release forthwith.

II. Argument

A. Administrative Exhaustion is Not Required

The government argues that this Court should decline to exercise habeas jurisdiction because M.M.T.T.’s brother’s sponsorship application is pending and supposedly “near completion.” Opp. at 13. This argument fails for three reasons.

First, Congress has not mandated exhaustion of administrative remedies for habeas petitions under 28 U.S.C. § 2241. The TVPRA contains no exhaustion requirement for habeas

¹ As of this date, Petitioner understands the home study has been successfully completed with positive reviews.

challenges to ORR custody, and this Court retains full discretion to adjudicate M.M.T.T.'s petition on the merits.

Second, the futility exception applies with full force here. *See McCarthy v. Madigan*, 503 U.S. 140 (1992)(recognizing futility as an exception to the exhaustion requirement), and *Carr v. Saul*, 593 U.S. 83, 93 (2021) (exhaustion not required where pursuit of administrative remedies would be futile). The government's own unlawful policies caused the delays that prevented M.M.T.T.'s brother from completing the application in February 2026, specifically due to these newly created requirements. Although M.M.T.T.'s brother has now obtained an ITIN and reopened his application, ORR has been in control of scheduling the remaining steps -- in-person ID verification, DNA collection, and background check renewal -- and has moved slowly. M.M.T.T. reopened his application in July 2026; over a month later, these steps remain incomplete. Under 45 C.F.R. § 410.1205(b), ORR should ordinarily adjudicate a close relative's sponsorship application within ten business days. The government cannot create barriers to an application's completion and then invoke the pendency of that same application as a basis for continued detention.

Third, the Petitioner's interests in immediate release from ten months of detention and in reunification with his brother far outweigh any judicial interest in further exhaustion. M.M.T.T. has been confined in institutional custody since November 2025. Every additional day of delay imposes concrete harm on a child who has been separated from his family for nearly a year. *See L.V.M. v. Lloyd*, 318 F. Supp. 3d 601, 618 (S.D.N.Y. 2018) ("neither party questions that prolonged detention is deleterious to young children, and, obviously, the longer the detention, the greater the harm"); *Jacinto-Castanon de Nolasco v. ICE*, 319 F. Supp. 3d 491, 502 (D.D.C. 2018) (family "[s]eparation irreparably harms plaintiffs every minute it persists").

Even if the application is “near completion,” as the government claims, M.M.T.T. has already been detained for approximately 10 months -- far exceeding any reasonable timeline. The government cannot use its own delays to argue exhaustion.

B. The TVPRA Mandates M.M.T.T.’s Release

The TVPRA requires that ORR place unaccompanied children “promptly” in the “least restrictive setting that is in the best interest of the child.” 8 U.S.C. § 1232(c)(2)(A). The TVPRA implementing regulations require release “without unnecessary delay” when detention is not required for the child’s safety or to prevent flight risk. 45 C.F.R. §§ 410.1200, 410.1201. The government does not contend -- and the record does not suggest -- that releasing M.M.T.T. to his brother’s custody would endanger M.M.T.T. or the community, or impair immigration proceedings. The delay in M.M.T.T.’s release is therefore “unnecessary” under the statute.

Further, the regulations impose specific timelines. Under 45 C.F.R. § 410.1205(b), ORR should ordinarily adjudicate a close relative’s sponsorship application **within ten business days**. M.M.T.T.’s brother is a Category 2 sponsor (close relative). He reopened his application in July 2026 and submitted the documentation by early August 2026. As of this filing -- over a month after the application was reopened -- ORR still has not completed the process. The outstanding steps (in-person ID verification, DNA sample collection and results, and background check renewal) are all within ORR’s control. The ten-day timeline has long since lapsed.

The government argues that ORR is “complying with applicable statutes and regulations” by requiring thorough vetting. Opp. at 3. But the statute requires verification of identity, relationship, and criminal history – and does not permit months-long delays. 8 U.S.C. § 1232(c)(3)(A). The statutory requirements can and should be satisfied expeditiously. M.M.T.T.’s brother has already submitted his identification, been fingerprinted, undergone background

checks, and completed a home study with positive reviews. The remaining items are routine procedural steps that ORR could complete in days, not weeks or months.

The government's reliance on Section 87001 of the One Big Beautiful Bill Act ("OBBBA") is misplaced. Section 87001 requires background checks and certain vetting steps -- requirements that M.M.T.T.'s brother has already satisfied or is in the process of completing. Nothing in Section 87001 mandates that sponsors provide only U.S.-issued identification, nor does it authorize indefinite delay in adjudicating a sponsorship application. The government conflates the need for vetting -- which Petitioner does not dispute -- with the lawfulness of its specific documentary requirements and processing delays. The question is not whether ORR may vet sponsors; it is whether ORR may impose requirements untethered from the statute and then use the resulting delay to justify continued detention.

The government's reliance on Section 87001 of the OBBBA is misplaced for an additional reason: the statute does not require that a sponsor possess a Social Security Number or ITIN as a prerequisite to sponsorship. Section 87001 directs ORR to "review" the "social security number or taxpayer identification number of the potential sponsor" as part of its background check process -- it does not mandate that every sponsor obtain one before proceeding. A more reasonable construction, consistent with the statute as a whole, is that where a sponsor has an SSN or ITIN, ORR verifies it as part of the background check; where a sponsor does not, the absence of such a number is simply one data point, not a disqualifying bar.

The government's own proposed rulemaking further confirms that these requirements were not grounded in any prior congressional mandate. On June 26, 2026, ORR published a Notice of Proposed Rulemaking in the Federal Register seeking to formally establish the very proof-of-identity, proof-of-income, and background-check requirements it has been unlawfully imposing.

See 91 Fed. Reg. 38,582 (June 26, 2026) (RIN 0970–AD26). The NPRM itself acknowledges that “[n]either statute nor ORR regulations . . . specifically delineate the types of documents ORR would accept as proof of identity or proof of income,” and that ORR “has historically described detailed requirements in sub-regulatory guidance.” *Id.* at 38,583. If Section 87001 already mandated that every sponsor possess an SSN or ITIN, there would be no need for a proposed rulemaking to establish such a requirement -- Congress would have already done so. The NPRM candidly acknowledges that ORR’s sub-regulatory guidance changes were “challenged in the District Court for the District of Columbia, which issued a preliminary injunction based on concerns that ORR was departing from prior policies without sufficient explanation.” *Id.* at 38,584. The government’s decision to pursue formal rulemaking is a tacit admission that the requirements it imposed on M.M.T.T.’s brother, and which caused the months-long delay at the heart of this case, lacked the force of law when they were applied.

Regarding the government’s claim that it is acting in “good faith,” good faith does not excuse a ten-month detention when the statute requires prompt release. Nor does the pendency of a process that the government itself delayed satisfy the TVPRA’s mandate. M.M.T.T.’s brother has done everything asked of him. It is the government that has failed to act with the urgency the law demands.

C. The ORR New Document Policies Are Unlawful

The government contends that the challenge to the ORR New Document Policies is largely “moot” because M.M.T.T.’s brother has now obtained an ITIN and provided compliant documentation. *Opp.* at 18. This argument fails. First, although M.M.T.T.’s brother has now complied with the new requirements, M.M.T.T. continues to challenge the underlying policies because they have *caused* the delay in this case, extending his detention from what should have

been days to approximately ten months. M.M.T.T.'s brother first applied in December 2025; he withdrew in February 2026 solely because of the unlawful new SSN/ITIN requirement. The months-long gap between withdrawal and reapplication is directly attributable to the time M.M.T.T.'s brother needed to obtain an ITIN. If the Court finds that the agency's ITIN rule is unlawful, that will strengthen Petitioner's argument that the agency's ongoing delay is unreasonable and unlawful. Second, the policies continue to cause systemic delays affecting M.M.T.T. and other children, and their lawfulness is a live controversy that this Court should address.

The ORR New Document Policies conflict with the TVPRA's implementing regulations, which explicitly contemplate foreign-issued identification. Section 410.1202(b) of Title 45, Code of Federal Regulations, provides that "ORR may consult with the issuing agency (e.g., consulate or embassy) of the sponsor's identity documentation to verify the validity of the sponsor's identity document presented." The reference to consulates and embassies presupposes that sponsors may present foreign-issued documents. The ORR New Document Policies, which require U.S.-issued identification such as SSNs or ITINs, are irreconcilable with this regulatory text.

The *Angelica S.* court addressed this precise issue. In granting a preliminary injunction, the court found that "it is substantially likely that ORR acted arbitrarily and capriciously by not providing adequate justification for its new sponsor documentation requirements." *Angelica S. v. U.S. Dep't of Health & Human Servs.*, 786 F. Supp. 3d 158, 173 (D.D.C. 2025). The court enjoined the Department of Health and Human Services ("HHS") "from creating a new blanket policy that departs from its previous one without explaining how it weighed the disrupted reliance interests against other valid considerations." *Id.* at 179. HHS has not provided that explanation.

The irrationality of the new policies is further demonstrated by the government's own practices in other immigration contexts. The federal government routinely accepts foreign-issued identification documents when individuals apply for permanent residency, asylum, temporary protected status, nonimmigrant visas, and individual taxpayer identification numbers.² In each of these contexts, the government verifies individuals' identities using foreign passports, consular identification cards, and other foreign government-issued documents. The government cannot credibly claim that foreign identification documents are unreliable in the context of sponsoring unaccompanied children while accepting those same documents in every other immigration context. As the *Angelica S.* court recognized, such inconsistency is the hallmark of arbitrary and capricious agency action. See *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Moreover, the ORR New Document Policies were promulgated without notice and comment, without consideration of reliance interests, and without adequate justification—in violation of the Administrative Procedure Act. See *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 33 (2020) (agency must “assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns”). ORR's own Family Reunification Application forms assured sponsors that the information they provide would be used to evaluate their ability to care for the child. Sponsors like M.M.T.T.'s brother relied on the prior policy when they came forward to sponsor their family members. The abrupt change -- and its retroactive application to children already in ORR custody -- violated those reliance

²See 8 C.F.R. § 244.9 (temporary protected status applicants must supply “[e]vidence of identity,” which may be “[a]ny national identity document from the alien's country of origin bearing photo and/or fingerprint”); 22 C.F.R. § 41.104 (nonimmigrant visa applicants must present a foreign passport); 8 C.F.R. § 208.3(a)(1) (asylum applicants may submit foreign passport); 26 C.F.R. § 301.6109-1(d)(3)(iii) (ITIN applicants must submit documentation establishing identity and connection to foreign government).

interests. Indeed, the ORR New Document Policies have resulted in dramatically longer detention periods and fewer reunifications -- precisely the opposite of the TVPRA's mandate.³

D. M.M.T.T.'s Continued Detention Violates the Fifth Amendment

1. Substantive Due Process — Prolonged Detention.

"The interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). "Freedom from imprisonment -- from government custody, detention, or other forms of physical restraint -- lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Supreme Court has recognized that detention for six months or longer raises serious due process concerns and creates a presumptively unreasonable period of detention. *Id.* at 701. M.M.T.T. has been detained for approximately ten months -- well beyond this threshold.

A child's interest in freedom from institutional restraint is at least as strong as an adult's. "[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone." *In re Gault*, 387 U.S. 1, 13 (1967). Although the law recognizes that "juveniles, unlike adults, are always in some form of custody," *Schall v. Martin*, 467 U.S. 253, 265 (1984), that principle supports state custody only "where the custody of the parent or legal guardian fails." *Reno v. Flores*, 507 U.S. 292, 302 (1993). Here, M.M.T.T.'s brother has been available and willing to assume custody for ten months. The *Flores* principle does not authorize indefinite government custody when a suitable family member is ready and waiting.

The government's reliance on *Flores* for the proposition that minors have no due process right to release is a misreading. *Flores* upheld regulations that *provided for* release to vetted

³See Office of Refugee Resettlement, Facts and Data, available at <https://acf.gov/orr/about/ucs/facts-and-data> (documenting increased average length of detention and decreased number of releases to sponsors since implementation of the new policies).

sponsors -- the very process the government here has unreasonably delayed. *Flores*, 507 U.S. at 302-04. The *Flores* Court approved the government's custodial arrangement precisely because it included a mechanism for prompt release. When the government itself frustrates that mechanism through arbitrary policy changes and processing delays, it cannot invoke *Flores* as a shield. Respondents have not identified any detainee-specific justification -- no flight risk, no dangerousness -- for M.M.T.T.'s continued detention. The detention is sustained solely by the government's own delay.

2. Substantive Due Process — Family Unity.

The government argues that a liberty interest in “family unity” in the immigration context “does not exist.” Opp. at 18 (citing *Reyna v. Hott*, 921 F.3d 204, 211 (4th Cir. 2019)). But *Reyna* involved adults (adult parents) in removal proceedings -- a context wholly unlike this case, which involves a child in ORR custody under the TVPRA, a statute whose entire purpose is to facilitate prompt family reunification. The TVPRA expressly prioritizes placement with family members. 8 U.S.C. § 1232(c)(2)(A). To hold that a child detained under a family-reunification statute has no cognizable interest in being united with his family would gut the statute's core mandate.

The Supreme Court has long recognized the liberty interest in familial association. See *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (“the interest of parents in the care, custody, and control of their children” is “perhaps the oldest of the fundamental liberty interests recognized by this Court”). Even under rational basis review, the government must show that its actions are rationally related to a legitimate interest. Here, the delay in processing M.M.T.T.'s brother's application -- caused by ORR's own unlawful policy changes -- bears no rational relationship to child safety or any other legitimate government interest.

3. Procedural Due Process.

Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), courts evaluate procedural due process by weighing (1) the private interest affected; (2) the risk of erroneous deprivation through the procedures used, and the probable value of additional or substitute procedural safeguards; and (3) the government's interest. Each factor weighs heavily in M.M.T.T.'s favor.

The private interest at stake -- a child's physical liberty and right to family unity -- is profound. The risk of erroneous deprivation is high: ORR's own newly created unlawful policies created barriers for an otherwise qualified sponsor, forcing M.M.T.T.'s brother to withdraw and reapply, which in turn caused M.M.T.T. to be reclassified as having "no potential sponsors" and to be transferred to Long-Term Foster Care. And the government's interest in further delay is minimal, given that the application is, by the government's own admission, nearly complete.

Indeed, the government's argument that "the process is almost complete" actually undercuts its position. If the remaining steps are routine and the application is nearly done, then there is no justification for continued detention rather than expedited processing and release. The government cannot simultaneously argue that the process is nearly over and that M.M.T.T. must remain detained while it finishes.

4. Equal Protection

The government argues that the political branches may treat citizens and aliens differently in the immigration context. Opp. at 18. That principle, even if applicable, does not insulate all distinctions from judicial review. Even under rational basis review, the government must act rationally. Requiring U.S.-issued identification from sponsors of unaccompanied children while accepting foreign-issued identification in every other immigration context -- including permanent residency, asylum, temporary protected status, and ITIN applications -- is not rational. The distinction is unrelated to any legitimate child-welfare objective.

Moreover, an agency violates the equal protection prong of the due process clause when it implements a neutral law through unfair rules or “aberrational enforcement policy.” *Allegheny Pittsburgh Coal Co. v. Cnty. Comm'n of Webster Cnty., W. Va.*, 488 U.S. 336, 344, n.4 (1989). As argued *supra*, the Respondents’ rules make senseless distinctions and separate families based on rules that lack a rational relationship to any legitimate governmental interests.

E. The Government’s Remaining Arguments Fail

The government devotes significant portions of its opposition to discussing the dangers of human trafficking and sponsor fraud. Opp. at 7-8. While these concerns are important in the abstract, they are entirely irrelevant to this case. M.M.T.T.’s brother was fingerprinted and passed background checks, public records checks, and sex offender registry checks as of December 4, 2025. *See* Biswas Dec. ¶¶39-40. Since then, a home visit has also been successfully completed. M.M.T.T. and his sponsor have cooperated fully with every step of the vetting process. The government’s generalized discussion of trafficking risks cannot justify the continued detention of a specific child whose specific sponsor has been vetted and found suitable.

The government’s invocation of the principle that “juveniles, unlike adults, are always in some form of custody,” *Flores*, 507 U.S. at 302, does not help its case. That principle recognizes that children must be in *someone’s* custody -- it does not authorize indefinite *government* custody when a suitable family member is available and willing. As the *Flores* Court explained, the state assumes custody only “where the custody of the parent or legal guardian fails.” *Id.* Here, M.M.T.T.’s brother’s custody has not “failed”-- he has never had custody. He has been trying to obtain custody for ten months, thwarted at every turn by the government’s own unlawful policies and inexplicable delays.

Finally, the government cannot use the complexity of its own vetting process as a shield against habeas review. The entire purpose of habeas corpus is to test whether detention is lawful. *See* 28 U.S.C. § 2241. A ten-month detention of a seventeen-year-old child, separated from his willing brother, largely caused by the government's own unlawful policy changes and processing delays, is precisely the kind of detention that habeas review exists to remedy.

III. Conclusion

For the foregoing reasons, this Court should grant the petition and order Respondents to release M.M.T.T. to his brother's custody forthwith, or, at a minimum, to expedite the completion of his brother's sponsorship application and release M.M.T.T. immediately upon its approval.

Respectfully submitted,

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