UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

T.M.B.A., a minor, by and through his Next Friend, LAUREN FOUDA,

Petitioner,

v.

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

ALEX J. ADAMS, Assistant Secretary for the Administration for Children and Families, in his official capacity;

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

DAWNISHA HELLAND, Assistant Principal Deputy Director at the Office of Refugee Resettlement, in her official capacity;

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

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

Respondents.

Case no. 1:26-cv-07604

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 freedoms.

2. Since early 2025, the government has engaged in a persistent, concerted, and unlawful effort to systematically undermine the rights of noncitizen children who enter the country without parental protection. Though Congress saw fit to establish a comprehensive statutory framework to protect these uniquely vulnerable children, the government—including the Respondents named in this suit—are plainly hostile to that goal. By dismantling the legal-services network representing detained children, imposing onerous and unnecessary vetting requirements on the family members who wish to receive them, and consistently failing to promptly reunify minors even with their parents, the government has evinced an intention to expel these children from the country without the process due under the Constitution and applicable statutes.

3. One such child facing indefinite detention in Respondents' custody is T.M.B.A., the Petitioner in this case. T.M.B.A. is 16 and wishes to reunify with his mother, who lives in Minnesota. The government has known since April 23, 2026 that T.M.B.A.'s mother was available to care for him and, throughout an investigation lasting more than four months, has found no reason to believe that she is unfit to do so. But rather than swiftly reuniting this family, Respondents' have subjected T.M.B.A. to prolonged detention—now lasting 135 days—while ignoring Congress's command to act "promptly" and always "in the best interest of the child." As a result, T.M.B.A. remains confined, against his will, more than one thousand miles from his mother's home in Minneapolis.

4. Whatever Respondents' motives for keeping T.M.B.A. in custody, the law does not permit them to detain him for a moment more. The procedural and substantive aspects of

the Due Process Clause require the government to (i) ensure that T.M.B.A. has access to meaningful procedures to vindicate his rights to liberty and family integrity and (ii) substantiate a compelling justification for both detaining T.M.B.A. and separating him for a prolonged period from his mother. Respondents have done neither. They have similarly infringed on T.M.B.A.'s rights under applicable statutes, regulations, and binding sub-regulatory guidance. For these reasons, and those that follow, T.M.B.A.'s ongoing confinement is unlawful, and the Court must grant this habeas petition and order Respondents to immediately and safely release T.M.B.A. to his mother's custody.

PARTIES

5. Petitioner T.M.B.A. is a 16-year-old child whom the government has deemed an unaccompanied minor and held in the custody of the Office of Refugee Resettlement ("ORR") for 135 days. He is currently detained in transitional foster care at Abbott House, an ORR subcontractor. T.M.B.A. wishes to be released and reunified with his mother in Minneapolis, Minnesota.

6. Lauren Fouda serves as Next Friend to Petitioner T.M.B.A., the real party in interest in this litigation. Ms. Fouda is an attorney at The Door's Legal Services Center, a nonprofit organization that provides legal assistance to unaccompanied children detained in ORR custody. Ms. Fouda and her colleagues have worked with T.M.B.A. since April 23, 2026, providing know-your-rights information, an individualized legal screening, and ongoing court-preparation and friend-of-court services. Because she has a significant relationship with T.M.B.A., Ms. Fouda is qualified to represent his interests.

7. 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 T.M.B.A. 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.

8. Respondent Alex J. Adams is the Assistant Secretary for the Administration for Children and Families (ACF), a component agency of HHS and parent agency to ORR. Respondent Adams is responsible for administering provisions of the Trafficking Victims Protect Reauthorization Act and overseeing ORR's detention of unaccompanied children. Respondent Adams is thus a legal custodian of T.M.B.A. He is sued in his official capacity. Respondent Adams's address is Administration for Children and Families, 330 C Street SW, Washington, DC 20416.

9. 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 T.M.B.A., responsible for his detention and authorized to produce and release him. 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.

10. Respondent Dawnisha Helland is the Assistant Principal Deputy Director at ORR. In prior litigation similar to this, the government has identified Respondent Helland as the official ultimately responsible for reunification and release determinations for unaccompanied children in ORR custody. As such, Respondent Helland is a legal custodian of T.M.B.A. She is sued in her official capacity. Respondent Helland's address

is Office of Refugee Resettlement, Administration for Children and Families, 330 C Street SW, Room 5123, Washington, DC 20201.

11. 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 T.M.B.A.'s legal custodian. She is sued in her official capacity. Respondent Christakos address is Abbott House, Irvington, NY 10533.

12. 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 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.

JURISDICTION AND VENUE

13. 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).

14. 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.

15. 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.

16. The Court's exercise of habeas jurisdiction in this case is proper because T.M.B.A. remains in Respondents' custody, is not free to leave, and, despite his wishes, has been denied release to his 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").

17. Venue properly lies within the Southern District of New York because T.M.B.A. is 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").

18. T.M.B.A. has never previously filed a petition for writ of habeas corpus in any court to review the lawfulness of his detention. *See* 28 U.S.C. § 2244(a)–(b).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

19. 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.

20. 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).

21. Here, pursuing further administrative process would be futile and provide T.M.B.A. 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).

22. Because no administrative process is available that would afford T.M.B.A. the relief he seeks, exhaustion would be futile. Accordingly, the prudential exhaustion doctrine is no barrier to T.M.B.A.'s 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. T.M.B.A. is a 16-year-old child who was born in Ecuador. Government records assert that he entered the United States on or about April 20, 2026 near Brownsville, Texas. He was at that time 15 years old and unaccompanied by a parent or legal guardian. U.S. Customs and Border Protection ("CBP") apprehended T.M.B.A. and designated him as an "unaccompanied child."

25. On April 22, 2026, DHS transferred T.M.B.A. to ORR custody. ORR placed T.M.B.A. at Abbott House, an ORR subcontracting "care provider" in Irvington, New York. T.M.B.A. remains in transitional foster care at Abbott House today.

26. When T.M.B.A. arrived in the United States, his mother, S.M.A.C. ("Ms. A.C."), was already living in Minneapolis, Minnesota. On April 23, 2026, the day after T.M.B.A. arrived in ORR custody, the agency identified Ms. A.C. as his "sponsor." Because T.M.B.A. had a parent available to receive him, ORR designated him as "Category 1"—the highest priority—for reunification.

27. Ms. A.C. has worked diligently to comply with every vetting requirement—including extensive document submission, biometrics and DNA collection, background investigations, and a home study—imposed by ORR. Though unable to travel to New York to visit her son in person, Ms. A.C. has spoken with him by phone almost daily throughout his prolonged detention. She worries constantly about his mental health and experiences anxiety over her inability to tell him when he can come home.

I. T.M.B.A.'s unique vulnerability

28. The government knew immediately that T.M.B.A. was particularly vulnerable. During screenings conducted by CBP on April 20 and 21, 2026, medical staff recorded T.M.B.A.'s self-reported history of depression, anxiety, suicidal ideation, and suicide attempt. Government records indicate that T.M.B.A. was "officially diagnosed with depression and has been seeing both [a] psychiatrist and [a] psychologist in his home country." T.M.B.A. also disclosed "constant intrusive self[-]harm thoughts and auditory hallucinations of self[-]harm." [redacted]

29. On April 27, 2026, T.M.B.A.'s assigned case manager and clinician at Abbott House jointly signed an assessment concluding that, based on T.M.B.A.'s self-reporting, he had "been a victim of [redacted] under circumstances that indicate that [his] health or welfare has been significantly harmed or threatened."

30. On May 11, 2026, T.M.B.A.'s assigned case manager submitted a request for assistance, on T.M.B.A.'s behalf, to ACF's Office on Trafficking in Persons (OTIP). The request indicated that T.M.B.A. had suffered [redacted] and labor trafficking, including [redacted] On June 25, 2026, OTIP issued an eligibility letter under 22 U.S.C. § 7105(b)(1)(G), concluding that T.M.B.A. had been "subjected to a severe form of trafficking in persons" and therefore was "eligible to apply for benefits and services" ordinarily available only to refugees.

II. Respondents' ongoing attempts to deport T.M.B.A.

31. Though the government knew that T.M.B.A. was an unaccompanied child, had a history of depression and self-harm, had survived [redacted], and had escaped a severe form of human trafficking, it nonetheless immediately moved to deport him from the United States.

32. DHS first served T.M.B.A. with a Notice to Appear ("NTA") on April 21, 2026, charging him as inadmissible to the United States for being present without prior admission or parole under 8 U.S.C. § 1182(a)(6)(A)(i) and for lacking a valid entry document under 8 U.S.C. § 1182(a)(7)(A)(i)(I). Subsequently, on April 28, 2026, DHS served T.M.B.A. with a superseding NTA, charging him only under section 1182(a)(6)(A)(i).

33. DHS filed the superseding charging document with the New York–Varick Immigration Court on May 4, 2026, thus placing T.M.B.A. into removal proceedings under 8 U.S.C. § 1229a. T.M.B.A. made his first appearance before the immigration court on June 9, 2026.

34. T.M.B.A. has remained unrepresented throughout most of his removal proceedings. The Door's Legal Services Center—a nonprofit organization that assists detained unaccompanied children—has provided T.M.B.A. with court-orientation services and accompanied him to his court appearances. However, The Door's attorneys were unable to offer representation to T.M.B.A. because of Respondents' unlawful withholding of payment for legal services delivered by the organization between November 2025 and July 2026 and Respondents' subsequent termination of funding for The Door and similar legal-service providers on July 31, 2026.

35. T.M.B.A. remains in removal proceedings at the New York–Varick Immigration Court. At his most recent hearing on September 1, 2026, attorneys from Legal Services NYC entered an appearance and requested a continuance to counsel T.M.B.A. and prepare his defense. Immigration Judge Lisa W. Ling granted a seven-day continuance, scheduling the next removal hearing for September 8, 2026.

36. Because his father abandoned him at the age of five years old, T.M.B.A. qualifies for Special Immigrant Juvenile Status (SIJS) under 8 U.S.C. § 1101(a)(27)(J). Special Immigrant Juveniles are considered paroled by operation of law and are eligible to apply for lawful permanent residency. 8 U.S.C. § 1255(a), (h)(1). T.M.B.A. is eligible for permanent residency through this procedure because his reunification with his father is not viable and because it would be against his best interests to be returned to Ecuador. *Id.* § 1101(a)(27)(J)(i)–(ii).

37. Though T.M.B.A. is qualified for SIJS, he cannot practically obtain that status from ORR custody. New York's Family Court Act, Ch. 686, 1962 N.Y. Laws (codified as N.Y. Fam. Ct. Act § 111 et seq.), which governs juvenile-court jurisdiction in New York, contains no provision permitting children in federal-government custody to access guardianship or custody proceedings and thereby obtain the state-court order required to seek SIJS under federal law. *See* 8 U.S.C. § 1101(a)(27)(J)(i) (defining a Special Immigrant Juvenile, in part, as a youth "who has been declared dependent on a juvenile court located in the United States"). Therefore, it is impossible for T.M.B.A. to obtain the lawful status for which he is eligible so long as Respondents refuse to release him.

III. Respondents' unlawful and unjustifiable prolongation of T.M.B.A.'s detention

38. T.M.B.A.'s biological mother, Ms. A.C., lives in Minneapolis, Minnesota with her partner and her daughter, T.M.B.A.'s sister. Ms. A.C. is desperate to reunite with her son and is ready and able to care for him. Ms. A.C. has sought his release since he was taken into ORR's custody. She has rigorously complied with ORR's extensive and burdensome sponsorship-application process.

39. Ms. A.C. began working with ORR officials to regain custody of T.M.B.A. in April 2026. Since then, she has been in consistent contact with Division of Sponsor Administration Federal Field Specialist ("FFS") Ricardo Rivera to complete each of ORR's sponsor-vetting requirements. Ms. A.C. promptly completed ORR's detailed Family Reunification Packet, and the Agency's background investigation has revealed no derogatory information.

40. As part of her "sponsorship" application, Ms. A.C. has submitted extensive documentation, including identity documents; proof of income; proof of employment;

proof of address and residence history for the past five years; and her tax-identification information. ORR demanded similar documentation from her partner and identity documents from her daughter.

41. ORR requires prospective "sponsors" to submit required documentation through an online portal. During her attempts to swiftly comply with ORR sponsor-vetting requirements over the course of months, Ms. A.C. noted that the online application malfunctioned "[a]lmost every time" she attempted to use it, delaying her submission of supporting documents.

42. On or about May 20, 2026, Ms. A.C. attended an appointment for biometrics collection. Her partner had a similar appointment the following week. Both background investigations returned clear.

43. On or about May 21, 2026, Ms. A.C. learned that ORR would require her partner to obtain an Individual Taxpayer Identification Number ("ITIN"), which he did not then have. Although aware that ITIN approval could take months, Ms. A.C. and her partner applied for the tax-identification number.

44. Ms. A.C. has also complied with other intrusive forms of vetting. On or about June 25, 2026, Ms. A.C. attended an in-person appointment to confirm her identity. She also submitted to DNA collection that day, which confirmed her parental biological relationship with T.M.B.A.

45. On or about June 8, 2026, Ms. A.C. participated in a home study conducted by a third-party agency. According to a report generated on or about June 12, 2026, Ms. A.C. received a positive home-study recommendation—indicating that her home would be safe for T.M.B.A. and that Ms. A.C. did not need to mitigate any dangers to receive her son.

46. On or about July 1, 2026, after waiting weeks for an update on her son's reunification, ORR informed Ms. A.C. for the first time that she, as a "Category 1 sponsor," could seek a waiver of the ITIN requirement for her partner. She immediately cooperated with FFS Rivera to apply for this exception.

47. After Ms. A.C. submitted her request for waiver of the ITIN requirement for her partner, FFS Rivera informed her that seven federal officials would have to approve the application. Throughout July 2026, FFS Rivera repeatedly told Ms. A.C. that the application was still pending further review. Finally, on August 28, 2026, FFS Rivera informed Ms. A.C. that ORR had finally—58 days after submission—approved the exemption.

48. On August 20, 2026, T.M.B.A.'s federally appointed child advocate from the Young Center for Immigrant Children's Rights filed a Best Interests Determination ("BID") with ORR. *See* 8 U.S.C. § 1232(c)(6)(A) (authorizing HHS to "appoint independent child advocates for child trafficking victims and other vulnerable unaccompanied . . . children" and charging child advocates with "effectively advocat[ing] for the best interest of the child"). The child advocate opined that "ORR should release [T.M.B.A.] to his mother."

49. The Young Center BID detailed Ms. A.C.'s diligent compliance with the ORR sponsor-vetting process and highlighted the home study's conclusion that Ms. A.C.'s household was "safe and appropriate." The BID further quoted from the home-study report's findings that Ms. A.C. "demonstrated a high level of awareness" of T.M.B.A.'s past psychological struggles; is "very well equipped to advocate for [his] needs"; and is "well connected to local resources in her community and has identified recreational, educational, medical, mental health[,] and legal resources" for her son.

50. The Young Center BID also expressed concern that T.M.B.A. "has been impacted by his length of time in ORR care and his anxiety, which have caused him to become emotionally dysregulated while in ORR care." In the child advocate's view, "[p]rolonged placement in ORR care is not in [T.M.B.A.]'s best interests as it will negatively impact his mental health." Based on these factors, the Young Center recommended that, consistent with T.M.B.A.'s best interests, ORR release T.M.B.A. to his mother's care "with appropriate safeguards through post[-]release services."

51. On August 31, 2026, T.M.B.A.'s attorneys submitted a letter to Respondent Salazar, demanding that, by September 3, 2026, ORR release T.M.B.A. from custody and safely transport him to Minneapolis to reunify with his mother. As of this filing, Respondent Salazar has provided no response.

52. Respondents' four-month investigation has uncovered no evidence that Ms. A.C. is an unfit parent or incapable of caring for T.M.B.A.'s physical and mental well-being. On the contrary, the results of Respondents' vetting have established that Ms. A.C. is attuned to T.M.B.A.'s unique needs, maintains a safe and appropriate home and family environment, and is capable of supporting her son financially and emotionally.

53. Though Respondents have produced no justification to retain custody of T.M.B.A., he remains in detention—135 days after his arrival in ORR custody.

RELEVANT LEGAL FRAMEWORK

54. An unaccompanied noncitizen[1] 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

[1] While Congress uses the word "alien" to refer to individuals present in the country without United States citizenship, 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."

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, reflecting "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

55. Congress has charged ORR with "coordinating and implementing the care and placement of unaccompanied . . . children." 6 U.S.C. § 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).

56. Two acts of Congress provide the primary statutory framework governing ORR's responsibilities with respect to unaccompanied children—the Homeland Security Act of 2002 ("HSA"), 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.

See, e.g., *Williams v. Garland*, 59 F.4th 620, 624 n.1 (4th Cir. 2023) (internal quotation marks omitted).

57. With the HSA, Congress transferred responsibility for the care and custody of unaccompanied children from the former Immigration and Naturalization Service ("INS") to ORR. *See* 6 U.S.C. § 279(a). This reorganization of responsibilities reflected Congress's 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").

58. 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 a child's 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.*

59. In 2024, ORR promulgated the Foundational Rule "to codify policies, standards, and protections for the [Unaccompanied Children] Program, consistent with the HSA and TVPRA," 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) [hereinafter

Community Legal Services], *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." 89 Fed. Reg. at 34440.

60. 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 45 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).

61. ORR's published sub-regulatory framework "provides guidance . . . regarding the placement, care, and services provided to unaccompanied . . . children in ORR custody." Off. of Refugee Resettlement, Admin. for Child. & Fams., U.S. Dep't of Health & Hum. Servs., Unaccompanied Children Bureau Policy Guide, Introduction (Feb. 27, 2025) ["ORR Policy Guide"], https://tinyurl.com/3py3p3hs. The ORR Policy Guide implements and is "consistent with ORR's legal authorities," including the HSA, the TVPRA, and the Foundational Rule. *Id.*

62. Section 2 of the ORR Policy Guide sets forth the Agency's procedures for releasing unaccompanied children in "a safe, efficient[] manner without unnecessary delay . . . to parents, guardians, relatives, or individuals designated by the child's parents, referred to as 'sponsors.'" *Id.* § 2.1 (Aug. 26, 2026), https://tinyurl.com/3y59jpnp. This portion acknowledges ORR's "duty to promptly place unaccompanied . . . children in the least restrictive setting that is in the best interests of the child." *Id.* § 2.8.5 (Aug. 1, 2024), https://tinyurl.com/2pncmu98.

63. According to the ORR Policy Guide, the Agency releases unaccompanied children to "sponsors" in the following order of descending preference: (i) a parent; (ii) a legal guardian; (iii) an adult relative; (iv) "an adult individual or entity designated by the parent or legal guardian"; (v) "a licensed program willing to accept legal custody"; and finally (vi) "an adult individual or entity seeking custody when it appears that there is no other likely alternative to long term ORR care and custody." *Id.* § 2.2.1 (Mar. 6, 2026), https://tinyurl.com/37jhjv4c.

64. Under the foregoing preference system, ORR groups unaccompanied children's cases into four categories:

- "**Category 1**: Parent or legal guardian. This includes qualifying step-parents that have legal or joint custody of the child or teen.
- **Category 2**: A brother; sister; grandparent **or** other immediate relatives (e.g., aunt, uncle, first cousin). This includes biological relatives, relatives through legal marriage, and half-siblings.
- **Category 3**: Other sponsor, such as distant relatives, unrelated adult individuals, or an institutional/organizational Sponsor.

- **Category 4**: No sponsor identified." *Id.* (bolding in original).

65. The ORR Policy Guide enumerates just two circumstances under which release to a parent or legal guardian may not be in a child's best interests: where (i) "[t]here has been a court ordered termination of parental rights over the child" and (ii) "[t]here is substantial evidence that the child would be at risk of harm if released to the parent or legal guardian." *Id.* Otherwise, "[r]elease to a sponsor is the least restrictive setting in the child's best interests" and therefore mandatory under the TVPRA. *Id.* § 2.8.8.1 (Aug. 26, 2026), https://tinyurl.com/2zymvyfd.

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

66. Beginning in early 2025, the government began to issue policy changes that increase the burden on proposed sponsors and impose additional barriers to the successful 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 C.F.R. § 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 biologically related to the child. *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.*

67. 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 that reviewed the Agency'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-02507, 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, e.g.*, *I.T. ex rel. B.V.T.R. v. Kennedy*, No. 26-CV-02563 (JAV), 2026 WL 882917, at *2 (S.D.N.Y. Mar. 31, 2026); *M.A. v. Molina*, No. 4:26-cv-00415, 2026 WL 741623, at *8 (N.D. Ohio Mar. 17, 2026)

68. 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-

02250 (JAV), 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 executive administration. *Compare* Off. of Refugee Resettlement, Admin. for Child. & Fams., U.S. Dep't of Health & Hum. Servs., Average Monthly Data (last accessed Sept. 2, 2026) ["ORR Monthly Data"], https://tinyurl.com/38x27hed, *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.

69. Children who are "erroneously institutionalized during their formative years may bear the scars for the rest of their lives." *Parham v. J.R.*, 442 U.S. 584, 628 (1979) (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 ORR detention times increased in 2018, Agency 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* 12 (Sept. 3, 2019), https://tinyurl.com/ms7w2pvs. These harms are yet more severe for young children. *See Lucas R. v. Becerra*, No. CV 18-5741-DMG (PLAx), 2022 WL 2177454, at *17 (C.D. Cal. Mar. 11, 2022) (discussing the opinions of "[n]umerous child welfare experts" regarding "the harm that detention causes children, particularly young children.").

70. Physicians and scholars have documented the severely detrimental and potentially permanent or life-threatening effects of immigration detention—and associated family separation—on children's psychological development. *See e.g.*, Ex. K (Dkt. No. 1.11), Bafreen Sherif, et al., *Immigration Detention of Children: A Systematic Review and Meta-analysis of Physical and Mental Health Impacts*, 35 Eur. Child & Adolescent Psychiatry 47, 67, 69 (2026) (concluding that "immigration detention undermines child wellbeing" in part because "[p]arent–child separations . . . aggravate[] children's stress responses via disruptions in attachment and secure parental relationships"); Ex. L (Dkt. No. 1.12), Sarah Mares, *Mental Health Consequences of Detaining Children and Families Who Seek Asylum: A Scoping Review*, 30 Eur. Child & Adolescent Psychiatry 1615, 1633–34 (2021) (finding that "immigration detention is a profoundly adverse . . . experience for already vulnerable children" and that "detaining unaccompanied children and adolescents . . . compounds prior adversity including trauma and parental loss or separation"); Ex. J (Dkt. No. 1.10), Julie M. Linton, et al., *American Academy of Pediatrics Policy Statement: Detention of Immigrant Children*, 139 Pediatrics, no. 5, May 2017, at 6 (discussing "high rates of posttraumatic stress disorder, anxiety, depression, suicidal ideation, and other behavioral problems" among detained unaccompanied children and noting the "expert consensus . . . that even brief detention can cause psychological trauma and induce long-term mental health risks for children");

III. Government attempts to undermine the rights of detained children

71. 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 terminated—for "the Government's

convenience" and despite recently appropriated funds available until September 2027—a longstanding legal-services contract with the nonprofit Acacia Center for Justice, thereby "effectively eliminating direct representation for unaccompanied children." *Community Legal Services*, 780 F. Supp. 3d at 909, 920. In an April 29, 2025 order, District Judge Araceli Martínez–Olguín of 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. *Community Legal Services*, 780 F. Supp. 3d at 927.

72. The district court's order notwithstanding, the government has persisted in its efforts to end legal services for vulnerable noncitizen children. Beginning in December 2025, the government stopped making payments under the restored legal-services contract, 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, at least one large subcontractor, whom the government owed 20 million dollars in unpaid legal fees, withdrew from the contract because of cash-flow issues. *See id.*

73. Next, on August 1, 2026, the government let lapse ORR's contractual relationship with the Acacia Center, thereby defunding the organization's nationwide network of nearly 100 subcontracting legal groups that provide services to unaccompanied children. Chiara Eisner, *More Than 25,000 Children Lose Previous Legal Protections, as Federal Contract Ends*, Nat'l Pub. Radio (Aug. 1, 2026), https://tinyurl.com/2jec2svx. This action immediately left "[a]n estimated 26,000 children . . . without independent legal

representation"—including the approximately 1,800 children who remain in custody. *Id.* As Judge Martínez–Olguín observed on August 6, 2026, the government now has "no mechanism . . . [of] complying with the preliminary injunction" issued in April 2025 or with the underlying statutory mandate to provide unaccompanied children access to counsel. Ex. F (Dkt. No. 1.6), *Community Legal Services*, No. 4:25-cv-02847-AMO (N.D. Cal. Aug. 6, 2026).

74. In another development on August 6, 2026, Judge Araceli Martínez–Olguín issued an enforcement order, finding that the government's withholding of congressionally appropriated funds for legal services delivered since December 2025 "violate[d] both the plain language as well as the spirit of the [April 29, 2025] preliminary injunction." *Id.* at 2. The court ordered the government to issue and disburse payment within 24 hours. *See id.* at 3. While this retroactive payment may make whole the *Community Legal Services* plaintiffs, the order alone will not restore the robust, expert, nationwide legal-services infrastructure that the government has now prospectively defunded. *See id.* (noting that the Defendants had not "sufficiently detail[ed] . . . efforts to comply with the preliminary injunction in the coming weeks and months.").

75. While the government has relentlessly—and unlawfully—endeavored to deny unaccompanied children access to legal counsel, immigration officials have simultaneously taken steps to skirt federal law and deport 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 76 detained children from their beds, drove them to the airport, and loaded them onto planes—all part of a scheme to surreptitiously "return them to Guatemala 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.

76. Though thwarted in their first attempt, the government may again try to expel detained unaccompanied children *en masse* and in violation of their rights and federal law. On June 24, 2026, Senator Ron Wyden wrote to Respondent Kennedy to express alarm regarding "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 1 (June 24, 2026), https://tinyurl.com/3e2s3umu. Senator Wyden understands that the government continues to "quietly prepare[] a mechanism to bypass federal immigration frameworks and illegally remove children" from the United States. *Id.* at 2. This "imminent threat to . . . children's safety and legal rights" still lingers. *Id.*

CAUSES OF ACTION

COUNT I:
VIOLATION OF PROCEDURAL DUE PROCESS

77. Petitioner restates and realleges all preceding paragraphs as if fully set forth herein.

78. 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.").

79. 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.

80. 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."); *In re 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 . . . retain a strong interest in being free from unnecessary government interference with their liberty.").

81. 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." *Duchesne*, 566 F.2d at 825 (quoting *Smith v. Org. of Foster Fams. for Equal. & Reform*, 431 U.S. 816, 844 (1977)).

82. 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.

83. In this case, T.M.B.A.'s interests in freedom from confinement and family unity are among the weightiest and most fundamental of constitutional liberties. *See Zadvydas*, 533 U.S. at 690; *Duchesne*, 566 F.2d at 825.

84. Moreover, the risk of erroneous deprivation is severe because Respondents have provided T.M.B.A. no constitutionally adequate process *at all*. *See Mathews*, 424 U.S. at 348 ("The essence of due process is the requirement that 'a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it.'" (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 171–72 (1951) (Frankfurter, J., concurring) (alteration in original))); *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 T.M.B.A. 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).

85. Finally, the government's interest is minimal because it has neither alleged that T.M.B.A.'s mother is incapable of caring for him nor substantiated any other compelling interest in detaining him. *See Souza v. Sessions*, No. 18 CV 4412, 2018 WL 10436697, at *2 (N.D. Ill. June 28, 2018) (determining that, where a parent is fit, the "government's interest[] in completing certain procedures to be sure that [the child] is placed in a safe environment . . . do not outweigh the family's interest in reuniting").

86. For these reasons, Respondents' continued detention of T.M.B.A. violates the Due Process Clause of the Fifth Amendment.

COUNT II:

VIOLATION OF SUBSTANTIVE DUE PROCESS

87. Petitioner restates and realleges all preceding paragraphs as if fully set forth herein.

88. 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 original; 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).

89. 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.

90. 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 id.* at 153 (approving the temporary removal of children from their parents only if "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).

91. 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, 118 (D.D.C. 2018) (same).

92. Here, Respondents have infringed T.M.B.A.'s right to family integrity and reunification with his mother despite no showing—indeed, no evidence at all—of parental unfitness. Nor have Respondents affirmatively sought judicial ratification of their continued custody of T.M.B.A. Because this deprivation has extended far beyond a brief investigatory period, it amounts to a violation of T.M.B.A.'s substantive rights under the Due Process Clause. *See Southerland*, 680 F.3d at 153; *Velez*, 401 F.3d at 93; *Duchesne*, 566 F.2d at 828.

COUNT III:

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

93. Petitioner restates and realleges all preceding paragraphs as if fully set forth herein.

94. 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))).

95. 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.

96. In this case, Respondents have failed to promptly place T.M.B.A. in the least-restrictive setting that is in his best interests—at home with his mother. T.M.B.A.'s mother is a "suitable family member" who "is capable of providing for the child'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 T.M.B.A.'s 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

97. Petitioner restates and realleges all preceding paragraphs as if fully set forth herein.

98. 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).

99. 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.

100. 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).

101. ORR's sub-regulatory guidance similarly requires the Agency to release unaccompanied children in "a safe, efficient[] manner without unnecessary delay." ORR Policy Guide § 2.1 (Aug. 26, 2026), https://tinyurl.com/3y59jpnp. Under the ORR Policy Guide, the Agency has a "duty to promptly place unaccompanied . . . children in the least restrictive setting that is in the best interests of the child." *Id.* § 2.8.5 (Aug. 1, 2024), https://tinyurl.com/2pncmu98.

102. The ORR Policy Guide specifically requires the Agency to ordinarily "adjudicate[] completed sponsor applications" for Category 1 sponsors "within **10 calendar days** of receipt." *Id.* § 2.7 (Mar. 13, 2026), https://tinyurl.com/8ax5wafb (bolding in original). Finally, after approving a sponsor, ORR must ordinarily release the child "as quickly as possible (within 3 calendar days after ORR approves the release)." *Id.* § 2.8.2 (Feb. 9, 2026), https://tinyurl.com/8mnrey87.

103. ORR's inefficient and dilatory handling of T.M.B.A.'s reunification case violates the Foundational Rule and Policy Guide. ORR has made neither "prompt" nor "continuous" efforts to release Petitioner; has not timely adjudicated his 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 Foundational Rule and ORR Policy Guide, are unlawful under the *Accardi* doctrine.

COUNT V:

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

104. Petitioner restates and realleges all preceding paragraphs as if fully set forth herein.

105. Under the Administrative Procedure Act ("APA"), 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).

106. Applying the APA, 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).

107. Respondents' failure to honor T.M.B.A.'s constitutional, statutory, regulatory, and sub-regulatory rights by refusing or unnecessarily delaying his release to his mother is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

PRAYER FOR RELIEF

For the foregoing reasons, Petitioner respectfully requests that this Court:

I. Assume jurisdiction over this matter;

II. Restrain Respondents, during the pendency of this litigation, from (i) transferring T.M.B.A. outside the Southern District of New York and (ii) removing T.M.B.A. 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 T.M.B.A. to the custody and care of his mother without additional conditions of supervision or alternatives to detention and (ii) safely and expeditiously transport T.M.B.A. to his mother's home;

V. In the alternative, grant T.M.B.A. 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 Respondents' prolonged detention of T.M.B.A. and deprivation of T.M.B.A.'s interest in freedom from confinement is unlawful and in violation of the U.S. Constitution, applicable statutes, and other law;

VII. Declare that Respondents' prolonged separation of T.M.B.A. from his mother and interference with T.M.B.A.'s right to family integrity is unlawful and in violation of the U.S. Constitution, applicable statutes, and other law;

VIII. Enjoin Respondents from again apprehending or detaining T.M.B.A. or again separating him from his mother or otherwise interfering with his right to family integrity without prior authorization of this Court;

IX. Award T.M.B.A. his costs and reasonable attorney fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and

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

Dated: September 4, 2026

Respectfully submitted,

/s/ Matthew A. Johnson
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am one of Petitioner's attorneys, and I submit this verification on Petitioner's behalf because he is a minor. I have discussed with Petitioner and other members of his 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: September 4, 2026

Respectfully submitted,

/s/ Robert D. Sanderman
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