IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

[redacted], a minor, by and through his next friend, LORENA [redacted] Petitioner, v. Program Director, in official capacity as Program Director, ORR-funded shelter at 7404 W. U.S. Highway 90, San Antonio, Texas; Director, Office of Refugee Resettlement; Secretary of Health and Human Services; Field Office Director, San Antonio Field Office, U.S. Immigration and Customs Enforcement; Acting Director, U.S. Immigration and Customs Enforcement; Secretary of Homeland Security; and Attorney General of the United States, Respondents.	§	Civil Action No. 5:26-cv- 6229

PETITION FOR WRIT OF HABEAS CORPUS
AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
(28 U.S.C. § 2241; 5 U.S.C. §§ 701–706)

EXPEDITED CONSIDERATION REQUESTED — PETITIONER TURNS 18 ON [redacted] 2026

INTRODUCTION

1. Petitioner [redacted] is a seventeen-year-old unaccompanied child from Guatemala held in the custody of the Office of Refugee Resettlement ("ORR") at a shelter at 7404 W. U.S. Highway 90 in San Antonio, Texas. He turns eighteen on [redacted] 2026—[redacted] On that day ORR's statutory authority over him ends, and custody will pass to U.S. Immigration and Customs Enforcement ("ICE"). According to [redacted] he has been told only that officials do not know whether he will be sent to an adult detention facility, removed to Guatemala, or released to his sister. No one has told his counsel which it will be.

2. Two of those three outcomes would violate federal law on this record. Congress has told the Department of Homeland Security ("DHS") exactly what to do when a child in ORR custody turns eighteen and is transferred to DHS: the Secretary "shall consider placement in the least restrictive setting available after taking into account the alien's danger to self, danger to the community, and risk of flight," and such youth "shall be eligible to participate in alternative to detention programs," including "placement of the alien with an individual . . . sponsor." 8 U.S.C. § 1232(c)(2)(B). [redacted] has no known criminal history, DHS's own Child Well-Being staff recorded that "[n]o concerns were identified," and his adult sister, Lorena [redacted] wants him home with her. A federal court has already found, after trial, that ICE has systematically failed to honor this command, and has permanently enjoined ICE from violating it. *Garcia Ramirez v. U.S. Immigr. & Customs Enf't*, 471 F. Supp. 3d 88 (D.D.C. 2020); 568 F. Supp. 3d 10 (D.D.C. 2021).

3. Summary removal would be equally unlawful. In August 2026, DHS determined that [redacted] is an "unaccompanied alien child" with a 2008 birth date. And on September 1, 2026, DHS served him with a Notice to Appear commencing removal proceedings under section 240 of the Immigration and Nationality Act ("INA") before the San Antonio Immigration Court—precisely what the Trafficking Victims Protection Reauthorization Act ("TVPRA") requires for every unaccompanied child from a non-contiguous country whom DHS seeks to remove. 8 U.S.C. § 1232(a)(5)(D). Those proceedings are pending. Yet DHS also holds (1) a July 2, 2026, expedited removal order that U.S. Border Patrol entered against [redacted] when he was seventeen, and (2) an August 20, 2026 decision "reinstating" that order, entered the same day DHS's own records designated him a UAC. DHS cannot prosecute a child in the section 240 proceedings that Congress made mandatory while holding in reserve a summary order that Congress forbade, ready to execute the moment he turns eighteen.

4. ORR, for its part, has held [redacted] for more than a month without releasing him to the one family member who came forward. His sister reports that she was told that, because she lacks lawful immigration status, it was "dangerous" for her to go through the sponsorship process. ORR now attributes the absence of a sponsor to her being "afraid." The TVPRA requires ORR to place a child "promptly" in "the least restrictive setting that is in the best interest of the child," 8 U.S.C. § 1232(c)(2)(A), and ORR's regulations require it to make and record prompt and continuous efforts toward family reunification and release, 45 C.F.R. § 410.1201(a).

5. [redacted] asks for narrow, time-sensitive relief that preserves the status quo and secures the individualized determination the law already requires: an order (a) barring Respondents

from removing him, or transferring him outside this District, while this case is pending; (b) barring his placement in secure adult detention unless and until ICE makes, documents, and discloses to counsel an individualized determination under 8 U.S.C. § 1232(c)(2)(B); and (c) ultimately granting the writ and directing his release to his sister under appropriate conditions. He is filing concurrently an Emergency Motion for Temporary Restraining Order and Order to Show Cause.

JURISDICTION, VENUE, AND EXHAUSTION

6. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) because [redacted] is "in custody in violation of the Constitution or laws . . . of the United States"; under 28 U.S.C. § 1331 (federal question); under the Suspension Clause, U.S. Const. art. I, § 9, cl. 2; and under 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–2202 (Declaratory Judgment Act), and 5 U.S.C. §§ 701–706 (Administrative Procedure Act ("APA")). The APA expressly contemplates review through "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus." 5 U.S.C. § 703.

7. Section 2241 habeas is the traditional forum for statutory and constitutional challenges to immigration custody. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *see also DHS v. Thuraissigiam*, 591 U.S. 103, 119 (2020) (habeas "has traditionally been a means to secure release from unlawful detention"). [redacted] is in federal custody today, and jurisdiction, once it attaches on filing, is not defeated by the government's later transfer of the petitioner. *See Rumsfeld v. Padilla*, 542 U.S. 426, 440–41 (2004) (discussing *Ex parte Endo*, 323 U.S. 283, 304–07 (1944)). Because ORR will hand [redacted] to ICE upon his eighteenth

birthday, the federal custody challenged here is continuous, and all custodians—present and imminent—are named.

8. No provision of 8 U.S.C. § 1252 strips this Court of jurisdiction. First, [redacted] challenges to his detention and placement—including ICE's obligation under § 1232(c)(2)(B)—do not challenge any removal order or "arise from" the three discrete actions listed in § 1252(g). *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (§ 1252(g) "applies only to three discrete actions"); *Jennings v. Rodriguez*, 583 U.S. 281, 292–95 (2018) (plurality opinion) (§ 1252(b)(9) does not bar challenges to detention).

9. Second, [redacted] claim that DHS may not remove him while the section 240 proceedings it commenced remain pending does not ask this Court to review the merits of the July 2, 2026 expedited removal order under 8 U.S.C. § 1252(e)(2), to review the August 20, 2026 reinstatement decision, or to decide whether he is removable. It asks the Court to enforce a mandatory statutory command addressed to DHS—that an unaccompanied child "shall be . . . placed in removal proceedings under section 240," 8 U.S.C. § 1232(a)(5)(D)—and to prevent DHS from mooting both those proceedings and this case by removing him before they conclude. That is a question of DHS's legal authority, not a challenge to the kind of discretionary decision § 1252(g) was designed to shield. *See AADC*, 525 U.S. at 482. M.F.M.T. acknowledges that the Fifth Circuit has applied § 1252(g) to bar certain challenges to the execution of removal orders, *see Cardoso v. Reno*, 216 F.3d 512 (5th Cir. 2000), and addresses that authority in his Emergency Motion. At minimum, this Court has jurisdiction to determine its own jurisdiction and to preserve the status quo while it does so. *See* 28 U.S.C. § 1651; *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–04 (1966).

10. Venue is proper in the Western District of Texas, San Antonio Division, because [redacted] is confined in Bexar County, Texas. 28 U.S.C. §§ 124(d)(4), 2241(a); *Padilla*, 542 U.S. at 443. Venue is also proper under 28 U.S.C. § 1391(e) because Respondents are officers of the United States sued in their official capacities, a substantial part of the events giving rise to the claims occurred in this District, and no real property is involved.

11. No statute requires exhaustion of administrative remedies before seeking habeas relief here, and any prudential exhaustion requirement is excused. *See McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992) (exhaustion excused where administrative remedy is inadequate, unduly delayed, or would cause irreparable harm). No administrative body can adjudicate ICE's § 1232(c)(2)(B) placement decision before it is made—it will be made at the moment of transfer on September 29, 2026. An Immigration Judge has no authority over ORR's custody and release decisions or over ICE's age-out placement determination. ORR's sponsor-denial appeal process, 45 C.F.R. § 410.1206, is available only after a written denial, and none has issued. There is no administrative appeal from a reinstatement decision. And the harms at issue—adult detention and removal of a teenager in violation of mandatory statutory protections—would occur before any administrative process could run.

PARTIES

12. Petitioner [redacted] s a native and citizen of Guatemala, born on [redacted] 2008, in [redacted] Guatemala. Ex. A at [redacted]-000002–03. His DHS file number is A[redacted]. Ex. G at [redacted]-000031. He has been in ORR custody at the shelter located at 7404 W. U.S. Highway 90, San Antonio, Texas 78227, since on or about

August 2026. He proceeds by his initials to protect his privacy as a minor. *Cf.* Fed. R. Civ. P. 5.2(a)(3).

13. Lorena [redacted] is [redacted] adult sister. She was born on [redacted] 1996, in Concepción Tutuapa to the same parents, [redacted] and [redacted] Baíl. Ex. C at [redacted] She resides in [redacted] Ohio She has sought to have [redacted] released to her care and is dedicated to his best interests. She brings this action as his next friend. Fed. R. Civ. P. 17(c)(2); *Whitmore v. Arkansas*, 495 U.S. 149, 163–64 (1990). [redacted] cannot bring this action in his own name because he is a minor in federal custody. Upon reaching the age of majority on [redacted] 2026, [redacted] will have capacity to proceed in his own name; counsel will promptly move to amend the caption, and [redacted] will ratify this action. *See* Fed. R. Civ. P. 17(a)(3). This Petition is also verified by counsel acting on his behalf. 28 U.S.C. § 2242.

14. Respondent, the Program Director of the ORR-funded care-provider facility at 7404 W. U.S. Highway 90, San Antonio, Texas, operated by BCFS Health and Human Services / Baptist Child & Family Services is [redacted] immediate physical custodian. Respondent is sued in their official capacity.

15. Respondent, Director of ORR, the component of the U.S. Department of Health and Human Services ("HHS") responsible for the care and custody of unaccompanied children. 6 U.S.C. § 279; 8 U.S.C. § 1232(b)(1), (c). She is [redacted] legal custodian and is sued in her official capacity.

16. Respondent, Secretary of HHS, in whom the TVPRA vests custody of unaccompanied children, 8 U.S.C. § 1232(b)(1), and responsibility for age-determination procedures, *id.* § 1232(b)(4). He is sued in his official capacity.

17. Respondent, Field Office Director, of the San Antonio Field Office of ICE Enforcement and Removal Operations, whose area of responsibility includes this District. The San Antonio office issued the Notice to Appear commencing [redacted] section 240 proceedings, Ex. G at [redacted] and is expected to assume custody of him on [redacted] 2026. He is sued in his official capacity.

18. Respondent, Acting Director of ICE and is responsible for ICE's detention, placement, and removal decisions nationwide. He is sued in his official capacity.

19. Respondent, Secretary of Homeland Security. The age-out obligation in 8 U.S.C. § 1232(c)(2)(B) is expressly imposed on "the Secretary" of Homeland Security, and DHS is responsible for the enforcement of the immigration laws, 8 U.S.C. § 1103(a). He is sued in his official capacity.

20. Respondent, Attorney General of the United States. The Executive Office for Immigration Review ("EOIR"), in which [redacted] section 240 proceedings are pending, is a component of the Department of Justice under his authority. 8 U.S.C. § 1103(g). He is sued in his official capacity.

21. Each Respondent is sued in his or her official capacity. Any successor in office is automatically substituted. Fed. R. Civ. P. 25(d).

LEGAL FRAMEWORK

A. The TVPRA's Protections for Unaccompanied Children

22. An "unaccompanied alien child" ("UAC") is a child who has no lawful immigration status in the United States, has not attained eighteen years of age, and has no parent or legal guardian in the United States available to provide care and physical custody. 6 U.S.C. § 279(g)(2).

23. Congress placed the custody of UACs in HHS, not DHS. 8 U.S.C. § 1232(b)(1). Any federal department that apprehends a child it determines to be a UAC must notify HHS within 48 hours and, absent exceptional circumstances, transfer the child to HHS within 72 hours. *Id.* § 1232(b)(2)–(3).

24. Because so much turns on age, Congress required HHS, in consultation with DHS, to "develop procedures to make a prompt determination of the age of an alien, which shall be used by the Secretary of Homeland Security and the Secretary of Health and Human Services for children in their respective custody." 8 U.S.C. § 1232(b)(4). Those procedures require age determinations to be based on the totality of the evidence, give weight to documentary evidence such as birth certificates, and forbid reliance on a medical age assessment as the sole basis of a determination. 45 C.F.R. §§ 410.1702–410.1703.

25. Most significantly here, Congress prohibited DHS from using summary procedures to remove unaccompanied children from non-contiguous countries. The TVPRA provides:

> Any unaccompanied alien child sought to be removed by the Department of Homeland Security, except for an unaccompanied alien child from a contiguous country subject to exceptions under subsection (a)(2), shall be—(i) placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a); (ii) eligible for relief under section 240B of such Act (8 U.S.C. 1229c) at no cost to the child; and (iii) provided access to counsel in accordance with subsection (c)(5).

8 U.S.C. § 1232(a)(5)(D). Guatemala is not a contiguous country. The Fifth Circuit has described the section 240 proceedings to which UACs are entitled as "mandatory." *Sanchez v. R.G.L.*, 761 F.3d 495, 500 (5th Cir. 2014). And in *Velasquez-Castillo v. Garland*, 91 F.4th 358 (5th Cir. 2024), a case involving a teenager with a prior removal order who later returned to the United States alone, the court vacated and remanded for the agency to

consider the TVPRA's application, reiterating that "the word 'shall' usually connotes a requirement" and that the court "has referred to TVPRA proceedings as 'mandatory.'" *Id.*

26. Once in HHS custody, a UAC "shall be promptly placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). ORR's regulations require it to make and record prompt and continuous efforts toward family reunification and release, 45 C.F.R. §§ 410.1201(a), 410.1203(a); treat a sibling as a "close relative" sponsor, *id.* § 410.1001; and decide a completed sponsorship application from a sibling within ten days absent unexpected delay, *id.* § 410.1205(b).

27. Nothing in the TVPRA makes a sponsor's immigration status a prerequisite to reunification. When it promulgated its Foundational Rule, HHS explained that the governing statutes "do not make any mention of a sponsor's potential immigration status as a prerequisite to receive an unaccompanied child into their custody and do not imbue ORR with the authority to inquire into immigration status as a condition for sponsorship." Unaccompanied Children Program Foundational Rule, 89 Fed. Reg. 34,384, 34,442 (Apr. 30, 2024). In March 2025, HHS rescinded by interim final rule the regulatory provisions that had barred ORR from disqualifying sponsors based solely on immigration status and from collecting or sharing status information for enforcement purposes. 90 Fed. Reg. 13,554 (Mar. 25, 2025). But ORR's published policy continues to state that ORR does not disqualify potential sponsors based solely on their immigration status and does not use or share information for immigration enforcement purposes. ORR Unaccompanied Children Program Policy Guide §§ 2.5, 2.6; *see also* 89 Fed. Reg. 96,250 (Dec. 2024); 89 Fed. Reg. 100,500 (Dec. 2024) (system of records notices). As one court observed of an earlier ORR information-sharing policy, practices that expose sponsors to immigration enforcement

"could dissuade otherwise qualified sponsors from filing family reunification applications, forcing ORR to hold unaccompanied minors in custody for longer than necessary." *J.E.C.M. ex rel. Saravia v. Lloyd*, 352 F. Supp. 3d 559, 583 (E.D. Va. 2018).

B. The Age-Out Mandate: 8 U.S.C. § 1232(c)(2)(B)

28. Congress specifically addressed what happens when a child in ORR custody turns eighteen:

> If a minor described in subparagraph (A) reaches 18 years of age and is transferred to the custody of the Secretary of Homeland Security, the Secretary shall consider placement in the least restrictive setting available after taking into account the alien's danger to self, danger to the community, and risk of flight. Such aliens shall be eligible to participate in alternative to detention programs, utilizing a continuum of alternatives based on the alien's need for supervision, which may include placement of the alien with an individual or an organizational sponsor, or in a supervised group home.

8 U.S.C. § 1232(c)(2)(B).

29. In *Garcia Ramirez*, a nationwide class of former unaccompanied children challenged ICE's practice of transferring youth to adult detention on their eighteenth birthdays without the consideration the statute demands. The court granted preliminary relief, *Ramirez v. U.S. Immigr. & Customs Enf't*, No. 18-cv-508 (RC), 2018 WL 1882861 (D.D.C. Apr. 18, 2018); after a bench trial, held that ICE had violated § 1232(c)(2)(B), finding that detention of age-outs was near-automatic in some field offices and that the field office handling a case predicted outcomes better than any individual risk factor, 471 F. Supp. 3d 88 (D.D.C. 2020); and entered a permanent injunction requiring ICE to comply with the statute, 568 F. Supp. 3d 10 (D.D.C. 2021). In December 2025, the court enforced that injunction against an October 2025 ICE policy that limited alternatives to detention to parole criteria, held that completing ICE's Age-Out Review Worksheet does not itself establish compliance, and barred re-arrest of released age-outs absent materially changed circumstances. *Garcia*

Ramirez v. U.S. Immigr. & Customs Enf't, 812 F. Supp. 3d 86 (D.D.C. 2025), *appeal docketed*, No. 26-5053 (D.C. Cir. Feb. 11, 2026).

30. Section 1232(c)(2)(B) thus requires ICE to make a genuine, individualized, pre-placement determination; to weigh only the statutory factors—danger to self, danger to the community, and risk of flight; to consider the "least restrictive setting available"; and to consider alternatives to detention, expressly including placement with an individual sponsor. It contains no exception for youth who have a prior removal order or who are in removal proceedings.

C. Expedited Removal, Reinstatement, and Section 240 Proceedings

31. Expedited removal permits an immigration officer to order certain noncitizens removed without a hearing. 8 U.S.C. § 1225(b)(1). The officer must create a record of the facts and of the noncitizen's statements on Form I-867A/B, read or have read to the noncitizen the contents of the statement, and have the noncitizen sign and initial it. 8 C.F.R. § 235.3(b)(2)(i). "Any removal order entered by an examining immigration officer pursuant to section 235(b)(1) of the Act must be reviewed and approved by the appropriate supervisor before the order is considered final." *Id.* § 235.3(b)(7). By virtue of § 1232(a)(5)(D), expedited removal is unavailable for an unaccompanied child from a non-contiguous country.

32. When DHS finds that a noncitizen has reentered illegally after removal, it may reinstate the prior order. 8 U.S.C. § 1231(a)(5); 8 C.F.R. § 241.8. A reinstatement decision is reviewable by petition for review in the court of appeals. *See Ojeda-Terrazas v. Ashcroft*, 290 F.3d 292 (5th Cir. 2002).

33. Section 240 proceedings are different in kind. "Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court." 8 C.F.R. § 1003.14(a). Once proceedings commence, DHS may not unilaterally abandon them; it must move the Immigration Judge for dismissal. 8 C.F.R. §§ 239.2(c), 1239.2(c); *Matter of G-N-C-*, 22 I. & N. Dec. 281, 284 (B.I.A. 1998).

D. Due Process and the *Accardi* Doctrine

34. The Due Process Clause "applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Id.* at 690. The Fifth Amendment "entitles aliens to due process of law in deportation proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993). These protections are not "for adults alone." *In re Gault*, 387 U.S. 1, 13 (1967). Before the government removes a person, due process requires notice "within a reasonable time and in such a manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs." *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (per curiam); *see A.A.R.P. v. Trump*, 605 U.S. 91, 95 (2025) (per curiam) ("notice roughly 24 hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster").

35. Agencies must follow their own rules, particularly rules that protect individual interests. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Vitarelli v. Seaton*, 359 U.S. 535, 545 (1959); *Pac. Molasses Co. v. FTC*, 356 F.2d 386, 389–90 (5th Cir. 1966).

STATEMENT OF FACTS

A. [redacted]. Is Seventeen Years Old.

36. [redacted] was born on [redacted] 2008, in [redacted] Guatemala. [redacted] His parents are [redacted] and [redacted] *Id.* His parents and three other siblings live in Guatemala. Ex. F at [redacted]

37. [redacted]'s older sister, Lorena [redacted] was born to the same parents in 1996 and lives in [redacted] Ohio. Ex. C at [redacted]

38. DHS itself has determined that [redacted] was born on [redacted] 2008. DHS's August 20, 2026, Form I-213 records his date of birth as [redacted] and his age as 17, identifies him as an "UNACCOMPANIED JUVENILE," and states that he "is an unaccompanied alien child (UAC)." [redacted] The Notice to Appear DHS issued on September 1, 2026, records the same date of birth. [redacted] CBP medical staff described him as "17M," and CBP Child Well-Being staff described him as "the 17-year-old child from Guatemala." Ex. F at [redacted] 000028.

B. July 2, 2026 Expedited Removal Order.

39. [redacted] entered the United States on or about June 25, 2026, at age seventeen, by crossing the Rio Grande in the Southern District of Texas. Ex. B at [redacted]

40. On July 2, 2026, U.S. Border Patrol agents at the Laredo Sector Headquarters processed [redacted] expedited removal. The Record of Sworn Statement (Form I-867A) lists his date of birth as [redacted] Ex. B at [redacted] The form states that no interpreter was used. *Id.* In the space for the "Alien Initials," the form states "Refused to Sign." *Id.*

The statement continues on pages that have not been provided to counsel. *Id.* ("CONTINUED ON I-831"; "Page 1 of 4").

41. The Notice and Order of Expedited Removal (Form I-860) charged [redacted] as inadmissible under INA § 212(a)(7)(A)(i)(I). Ex. B at [redacted] The examining agent electronically signed the determination of inadmissibility at 5:09:20 a.m. and the order of removal at 5:09:22 a.m. *Id.*; Ex. B at [redacted] The agent's certificate stating that he personally served the order on [redacted] bears an electronic signature at approximately 5:09 a.m. on July 2, 2026. *Id.* The supervisory approval required by 8 C.F.R. § 235.3(b)(7) was electronically signed afterward, at 5:12:49 a.m. Ex. B at [redacted] Ex. B at [redacted] The Form I-296 notifying [redacted] that he was barred from returning for five years was signed at 5:09:12 a.m.—before the order itself. Ex. B at [redacted] did not sign the I-860 acknowledgment or the I-296. Ex. B at [redacted]

42. According to [redacted] there was communication with the Consulate of Guatemala during his July 2026 detention.

43. Border Patrol did not refer [redacted] to HHS, did not conduct an age determination under 8 U.S.C. § 1232(b)(4), and did not place him in section 240 proceedings. He was removed to Guatemala on July 4, 2026. Ex. E at MFMT-000021; Ex. D at [redacted]

C. In August 2026, DHS Designated [redacted] a UAC—and Reinstated the Order the Same Day.

44. On August 19, 2026, [redacted], then seventeen and alone, reentered the United States near Fort Hancock, Texas, and was apprehended by Border Patrol that morning. Ex. D at [redacted]000015–17.

45. DHS's Form I-213, dated August 20, 2026, records his true date of birth and age, identifies him as an "UNACCOMPANIED JUVENILE" and an "unaccompanied alien child (UAC)," lists his occupation as "STUDENT," and records no known criminal history. Ex. D at [redacted]000015–17.

46. On the same day, August 20, 2026, an Acting Patrol Agent in Charge in the El Paso Sector signed a Notice of Intent/Decision to Reinstate Prior Order (Form I-871), reinstating the July 2, 2026 expedited removal order. Ex. E at [redacted]-000021. DHS also issued a Warrant of Removal/Deportation (Form I-205), Ex. E at [redacted]000022–24; a Form I-294 warning of a twenty-year bar to return, Ex. E at [redacted]00025; a Form DHS-1815 notice assessing a $5,130 fee; and a notice assessing a $250 civil penalty under INA § 275, Ex. H ([redacted]-000035–40).

47. Consistent with its determination that [redacted] is a UAC, DHS transferred him to ORR custody under 8 U.S.C. § 1232(b)(3) on or about August 2026. He has since been held at the ORR-funded shelter at 7404 W. U.S. Highway 90 in San Antonio.

D. DHS Commenced Section 240 Removal Proceedings, Which Remain Pending.

48. On September 1, 2026, ICE Enforcement and Removal Operations in San Antonio issued, and personally served on [redacted]a Notice to Appear (Form I-862) "[i]n removal proceedings under section 240 of the Immigration and Nationality Act." Ex. G at [redacted]000031–33. The NTA charges him with inadmissibility under INA § 212(a)(6)(A)(i) as a noncitizen present without admission or parole, lists his date of birth as [redacted]2008, and gives his residence as the shelter's address. Ex. G at [redacted]00031.

49. DHS filed the NTA with the Immigration Court on September 2, 2026, and jurisdiction vested in the Immigration Court on that date. Ex. G at [redacted]000031; 8 C.F.R. §

1003.14(a). On September 15, 2026, DHS filed the Form I-213 in those proceedings. Ex. D at [redacted]000015.

50. Undersigned counsel Mailin Maldonado represents [redacted]. in his removal proceedings and has filed a Form EOIR-28 notice of appearance.

51. The section 240 proceedings remain pending. No Immigration Judge has ordered [redacted] removed, and DHS has not moved to dismiss the proceedings.

E. ORR Has Not Released [redacted] to His Sister.

52. Ms. [redacted] has been in communication with ORR about having her brother released to her.

53. According to Ms. [redacted] she was advised that she did not have legal status and that it was dangerous for her to go through the sponsorship process. She understood from those communications that she could not obtain custody of her brother because of her immigration status.

54. ORR on the other hand explained to undersigned counsel that [redacted] could not be released to his sister because he did not have a sponsor. She has since attributed [redacted] lack of a sponsor to his sister being afraid.

55. To counsel's knowledge, ORR has not issued a written decision denying release to Ms. [redacted] as not provided notice of any right to appeal under 45 C.F.R. § 410.1206, and has not identified any concern about her suitability other than her immigration status.

F. M.F.M.T. Turns Eighteen on [redacted] 2026.

56. M.F.M.T. turns eighteen on [redacted] 2026. On that date he will cease to meet the statutory definition of a UAC, 6 U.S.C. § 279(g)(2), and ORR is expected to transfer him to ICE custody.

57. According to [redacted] he has been told by shelter staff that it is not known whether he will be taken to an adult detention facility, removed to Guatemala, or released to his sister. He was also explained that he could not be released but until after his 18th birthday.

58. Counsel has not been provided with any Age-Out Review Worksheet, post-eighteen plan, or other indication that ICE has made or will make the determination required by 8 U.S.C. § 1232(c)(2)(B).

59. Because DHS maintains the August 20, 2026 reinstatement decision and the I-205 warrant, Ex. E at [redacted]-000021–24, there is a substantial risk that DHS will treat [redacted] as immediately removable upon his transfer to ICE custody, without regard to the pending section 240 proceedings. Removal would moot those proceedings, subject him to the five-year and twenty-year bars recited in DHS's notices, Ex. B at [redacted]000008; Ex. E at [redacted]000025, and return him to the circumstances from which he fled.

60. [redacted] poses no danger to himself or the community and is not a flight risk. He has no known criminal history. Ex. D at [redacted]000015. CBP Child Well-Being staff identified no concerns. Ex. F at [redacted]-000028. He is represented by counsel in his pending section 240 proceedings, in which he intends to seek relief, and he has a sister prepared to receive him at a stable address.

CLAIMS FOR RELIEF

COUNT ONE

Violation of 8 U.S.C. § 1232(c)(2)(B) — Unlawful Adult Detention Without Least-Restrictive-Setting Determination
(28 U.S.C. § 2241; 5 U.S.C. § 706; against Respondents Ortega, Venturella, and Mullin)

61. [redacted] incorporates paragraphs 1 through 60.

62. [redacted] is "a minor described in subparagraph (A)" of 8 U.S.C. § 1232(c)(2): an unaccompanied child in HHS custody. When he reaches eighteen and is transferred to DHS, the Secretary "shall consider placement in the least restrictive setting available after taking into account [his] danger to self, danger to the community, and risk of flight," and he "shall be eligible to participate in alternative to detention programs," including placement with an individual sponsor. 8 U.S.C. § 1232(c)(2)(B).

63. Every statutory factor favors release: [redacted] has no known criminal history; CBP Child Well-Being staff identified no concerns; he is represented by counsel in pending section 240 proceedings; and his sister is ready to receive him. ¶¶ 47, 49, 62.

64. There is no indication that ICE has made or will make the required individualized determination before placing [redacted] in secure adult detention. ICE has a documented history of failing to do so, *Garcia Ramirez*, 471 F. Supp. 3d 88; and it adopted a policy in October 2025 that a federal court enjoined as inconsistent with the statute, *Garcia Ramirez*, 812 F. Supp. 3d 86.

65. Detention of [redacted] n a secure adult facility without the determination § 1232(c)(2)(B) requires would be custody "in violation of the . . . laws . . . of the United States," 28 U.S.C. § 2241(c)(3), and agency action "not in accordance with law" and "without observance of

procedure required by law," 5 U.S.C. § 706(2)(A), (D). ICE's failure to consider less restrictive placement is also agency action "unlawfully withheld." *Id.* § 706(1).

66. [redacted] seeks individualized habeas relief concerning his own custody. He appears to be a member of the *Garcia Ramirez* class; counsel has notified class counsel. He does not seek to enforce the *Garcia Ramirez* injunction or to obtain class-wide relief, and his remaining claims arise under provisions not at issue in that case.

COUNT TWO

Violation of 8 U.S.C. § 1232(a)(5)(D), 8 U.S.C. § 1229a, and 8 C.F.R. §§ 1003.14(a), 239.2(c) — Removal Outside Pending Section 240 Proceedings (28 U.S.C. § 2241; 5 U.S.C. § 706; against DHS Respondents and Respondent Blanche)

67. [redacted]ncorporates paragraphs 1 through 60.

68. [redacted] is an unaccompanied child from a non-contiguous country whom DHS seeks to remove. Congress commanded that he "shall be . . . placed in removal proceedings under section 240." 8 U.S.C. § 1232(a)(5)(D). DHS complied with that command on September 1–2, 2026, by serving and filing a Notice to Appear. ¶¶ 51–52. Jurisdiction over his removal case vested in the Immigration Court, 8 C.F.R. § 1003.14(a), and DHS may end those proceedings only by motion to the Immigration Judge, 8 C.F.R. §§ 239.2(c), 1239.2(c); *Matter of G-N-C-*, 22 I. & N. Dec. at 284.

69. The July 2, 2026 expedited removal order was entered against a seventeen-year-old unaccompanied child from Guatemala—a person Congress excluded from expedited removal. 8 U.S.C. § 1232(a)(5)(D). DHS's August 20, 2026, reinstatement of that order was entered on the same day DHS recorded that [redacted] was a seventeen-year-old UAC. ¶¶ 47–48. And DHS then elected to proceed against him under section 240.

70. Removing [redacted] on the basis of the July 2 order or its reinstatement while section 240 proceedings remain pending would contravene § 1232(a)(5)(D), usurp the Immigration Judge's jurisdiction, violate DHS's own regulations, and render the statutory entitlement to section 240 proceedings, voluntary departure at no cost, and access to counsel a nullity. 8 U.S.C. § 1232(a)(5)(D)(i)–(iii). It would also be arbitrary and capricious for DHS to maintain two irreconcilable positions—that [redacted] is a UAC entitled to section 240 proceedings, and that he is an adult subject to a summary order—and to act on whichever is more convenient at the moment of his eighteenth birthday. 5 U.S.C. § 706(2)(A).

71 [redacted] does not ask this Court to adjudicate his removability or the merits of any relief application; those questions belong to the Immigration Judge in the pending proceedings.

COUNT THREE

Fifth Amendment — Procedural Due Process (against all Respondents)

72 [redacted] ncorporates paragraphs 1 through 60.

73. [redacted] has protected liberty interests in freedom from physical restraint, *Zadvydas*, 533 U.S. at 690; in not being removed from the United States without the process the law provides, *Reno v. Flores*, 507 U.S. at 306; and in the integrity of his family, *Moore v. City of E. Cleveland*, 431 U.S. 494, 503–04 (1977) (plurality opinion).

74. Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), the process due is measured by the private interest affected, the risk of erroneous deprivation and the value of additional safeguards, and the government's interest. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (plurality opinion). Each factor favors [redacted] His interests—liberty and the right not to be summarily removed as a child—are at their apex. The risk of error is extreme: the

only order that would permit summary removal rests on an incorrect birth year that DHS's own records now contradict, was entered without an interpreter or the child's signature, and was reinstated the same day DHS found him to be a child. And the government has no legitimate interest in detaining an eighteen-year-old in secure adult custody without the determination Congress required, or in removing him outside proceedings it chose to initiate.

75. Due process forbids removing [redacted] without notice "within a reasonable time and in such a manner as will allow [him] to actually seek habeas relief in the proper venue before such removal occurs." *J.G.G.*, 604 U.S. at 673; *see A.A.R.P.*, 605 U.S. at 95. It likewise forbids placing him in secure adult detention without an individualized determination and notice to his counsel and forbids ORR from prolonging his custody on the basis of a deterred sponsorship application without notice of the reasons and an opportunity to respond. *Cf. D.B. v. Cardall*, 826 F.3d 721 (4th Cir. 2016) (vacating denial of habeas relief and remanding for consideration of the procedural due process owed a parent seeking release of her child from ORR custody).

COUNT FOUR

Failure to Follow Binding Statutes, Regulations, and Policies (*Accardi*) (28 U.S.C. § 2241; 5 U.S.C. § 706; against all Respondents)

76. [redacted] incorporates paragraphs 1 through 60.

77. DHS failed to follow its own rules and binding procedures in processing [redacted] including: (a) the age-determination procedures that 8 U.S.C. § 1232(b)(4) and 45 C.F.R. §§ 410.1702–410.1703 require DHS to use for children in its custody, which DHS disregarded when, on August 20, 2026, it simultaneously found him to be a seventeen-

year-old UAC and reinstated an order premised on his being an adult; (b) 8 C.F.R. § 235.3(b)(2)(i), which requires that the sworn statement be read to the noncitizen and signed and initialed by him; and (c) 8 C.F.R. § 235.3(b)(7), under which an expedited removal order is not final until reviewed and approved by a supervisor—yet the order was served, and the five-year-bar notice issued, before supervisory approval. ¶¶ 42–43, 48.

78. ORR failed to follow 45 C.F.R. §§ 410.1201(a) and 410.1203(a), which require prompt and continuous efforts toward family reunification and release, and its published policy that it does not disqualify potential sponsors based solely on immigration status and does not use or share information for immigration enforcement purposes. ORR Policy Guide §§ 2.5, 2.6. ¶¶ 54–57.

79. These rules exist to protect children like [redacted] Their violation prejudiced him: it produced a summary removal order against a child, a reinstatement that DHS now may seek to execute, and prolonged custody that may soon become adult detention. Respondents' failure to follow them requires relief. *Accardi*, 347 U.S. at 268; *Pac. Molasses*, 356 F.2d at 389–90.

COUNT FIVE

Violation of 8 U.S.C. § 1232(c)(2)(A) and 45 C.F.R. Part 410 — Failure to Pursue Prompt Release to a Close Relative
(28 U.S.C. § 2241; 5 U.S.C. § 706; against HHS and ORR Respondents)

80 [redacted]ncorporates paragraphs 1 through 60.

81. The TVPRA requires that [redacted] be "promptly placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). For a child with a willing adult sibling, that setting is presumptively the sibling's home. 45 C.F.R. §§ 410.1001, 410.1205(b).

82. Rather than assess Ms. [redacted] as a sponsor, ORR communicated to her that her lack of immigration status made the process dangerous, and then treated her resulting fear as the reason no sponsor exists. ¶¶ 55–56. Deterring a close relative from applying, and then relying on the absence of an application to prolong custody, is inconsistent with the statute's command, with ORR's regulations, and with HHS's own recognition that the statutes do not make a sponsor's immigration status a prerequisite to reunification. 89 Fed. Reg. at 34,442; *see J.E.C.M.*, 352 F. Supp. 3d at 583.

83. ORR's conduct is agency action unlawfully withheld and not in accordance with law, 5 U.S.C. § 706(1), (2)(A), and results in custody in violation of federal law, 28 U.S.C. § 2241(c)(3). Its effects will not end on [redacted]: the sponsor information ORR has or should have developed is central to the least-restrictive-setting determination ICE must make under § 1232(c)(2)(B).

COUNT SIX

Fifth Amendment — Substantive Due Process
(against all Respondents)

84. [redacted] incorporates paragraphs 1 through 60.

85. Civil detention violates due process unless it bears a reasonable relation to a legitimate purpose. *Zadvydas*, 533 U.S. at 690; *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

86. Detaining [redacted]—a teenager with no known criminal history, no identified risk, pending proceedings, counsel, and a sister ready to receive him—in secure adult custody serves no legitimate purpose that release to his sister under supervision would not serve

equally well, and needlessly severs him from his family. His continued detention would be excessive in relation to any legitimate governmental objective.

COUNT SEVEN

Administrative Procedure Act, 5 U.S.C. §§ 702, 706 (Pleaded in the Alternative) (against all Respondents)

87. [redacted] incorporates paragraphs 1 through 60.

88. To the extent any claim above is not cognizable in habeas, it is cognizable under the APA. ICE's age-out placement decision, DHS's decision to maintain and execute a reinstated summary order notwithstanding pending section 240 proceedings, and ORR's handling of Ms. [redacted] request each mark the consummation of agency decision-making and determine rights or obligations. *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997). Each is arbitrary, capricious, an abuse of discretion, not in accordance with law, in excess of statutory authority, or without observance of procedure required by law, 5 U.S.C. § 706(2)(A), (C), (D), or constitutes agency action unlawfully withheld, *id.* § 706(1). M.F.M.T. has no other adequate remedy in a court. *Id.* § 704.

COUNT EIGHT

Detention Without an Individualized Custody Hearing (Preserved) (28 U.S.C. § 2241; against DHS Respondents)

89. [redacted] incorporates paragraphs 1 through 60.

90. If ICE detains [redacted] after [redacted] 2026 during his pending section 240 proceedings, his detention is governed by 8 U.S.C. § 1226(a), and he is entitled to an individualized custody determination and bond hearing. [redacted] acknowledges that *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), holds that noncitizens who

entered without inspection are subject to detention under 8 U.S.C. § 1225(b)(2)(A), and that this Court is bound by that decision. He raises this claim to preserve it for further review, including in light of the pending en banc rehearing in *Sosnava Rodriguez v. Ortega*, No. 26-50183 (5th Cir.) (argued en banc Sept. 24, 2026), which concerns whether due process requires an individualized hearing for persons detained under § 1225(b)(2)(A).

91. Independently, and whatever detention statute DHS invokes, § 1232(c)(2)(B) governs ICE's placement decision for a youth transferred from ORR on his eighteenth birthday. That provision contains no exception for persons subject to § 1225(b) or § 1231(a), and *Buenrostro-Mendez* did not address it.

PRAYER FOR RELIEF

WHEREFORE, [redacted] respectfully requests that the Court:

A. Assume jurisdiction over this matter;

B. Issue an Order to Show Cause under 28 U.S.C. § 2243 directing Respondents to show cause within three days why the writ should not be granted, and set a prompt hearing;

C. Temporarily restrain and preliminarily enjoin Respondents, pending final resolution of this Petition, from (1) removing [redacted] from the United States; (2) transferring him outside the Western District of Texas; and (3) placing him in any secure adult detention facility without first making, in writing, and serving on counsel an individualized determination under 8 U.S.C. § 1232(c)(2)(B) that considers release to his sister and alternatives to detention;

D. Declare that [redacted]s entitled to section 240 removal proceedings under 8 U.S.C. § 1232(a)(5)(D) and that Respondents may not execute the July 2, 2026,

expedited removal order or the August 20, 2026 reinstatement while those proceedings remain pending;

E. Declare that Respondents must comply with 8 U.S.C. § 1232(c)(2)(B) upon [redacted] transfer to DHS custody, including by considering placement with his sister, Lorena [redacted] and alternatives to detention;

F. Issue a writ of habeas corpus directing Respondents to release [redacted] to the custody of his sister under the least restrictive conditions of supervision necessary, or, in the alternative, directing ICE to make an individualized determination under 8 U.S.C. § 1232(c)(2)(B) within a time set by the Court, subject to the Court's review;

G. Order Respondents to produce to counsel within 48 hours [redacted]s ORR case file, including all sponsor-assessment records, any post-eighteen plan and Age-Out Review Worksheet, and any age-determination records, *see* 45 C.F.R. § 410.1309(c), and the complete Form I-867A/B from July 2, 2026;

H. Award reasonable attorneys' fees and costs to the extent permitted by law, including under 28 U.S.C. § 2412; and

I. Grant such other relief as law and justice require. 28 U.S.C. § 2243.

Dated: September 27, 2026

Respectfully submitted,

/s/ Mailin Maldonado
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Pro hac vice application pending
Counsel for Petitioner

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

I, Mailin Maldonado, attorney for Petitioner [redacted] in this action and in his removal proceedings before the San Antonio Immigration Court. I submit this verification on his behalf because he is a minor in federal custody. I have read the foregoing Verified Petition. The factual statements in it are true and correct to the best of my knowledge, information, and belief, based on my communications with [redacted] and with his sister, Lorena [redacted] and on my review of the records attached as Exhibits A through H. Statements attributed to [redacted] or to Ms. [redacted] reflect what each of them has reported to me.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. 28 U.S.C. § 1746.

Executed on September 27, 2026, at Spring, Texas.

Mailin Maldonado

CERTIFICATE OF SERVICE

I certify that on September 27, 2026, I filed the foregoing with the Clerk of Court using the CM/ECF system.

/s/ Amanda Aguilar
AMANDA AGUILAR