UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

C.M.C, a minor,	§	
Petitioner,	§	CIVIL NO. 4:25-CV-05389
v.	§	
KRISTI NOEM, et al.,	§	
Respondents.	§	

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR SUMMARY JUDGMENT

The Government[1] files this response to the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (Dkt. 1) and moves for summary judgment pursuant to Federal Rule of Civil Procedure 56. As explained below, Petitioner's claim for habeas relief should be denied because he is lawfully in the custody of the U.S. Office of Refugee Resettlement (ORR). For the reasons discussed below, any claim for emergency injunctive relief should also be denied.

I. SUMMARY OF THE ARGUMENT

Petitioner, C.M.C., is currently in the custody of ORR, which is a Department of Health and Human Services (HHS). It is uncontested that Petitioner is subject to a final order of removal. Thus, after he was encountered by law enforcement, U.S. Immigration and Customs Enforcement (ICE) took him into custody and placed him with ORR. ORR is

[1] The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). That said, it is the originally named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

maintaining custody of Petitioner under its governing statutes and regulations. ORR is working with a potential sponsor for Petitioner to complete the sponsorship application process. The Court should allow this process to be completed.

II. AUTHORITY BY WHICH PETITIONER IS HELD

Petitioner is subject to a final order of removal. ICE therefore lawfully detained Petitioner and placed him in ORR custody. ORR is maintaining custody pursuant to its statutory authorities. Sec. 462 of the Homeland Security Act of 2002 (HSA) (6 U.S.C. 279), and Sec. 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) (8 U.S.C. 1232).

III. RELEVANT BACKGROUND

In 2023, U.S. Border Patrol encountered Petitioner, along with his mother and two siblings. *See* Exhibit 1, Declaration of Deportation Officer Frausto, at ¶ 9. The Petitioner and his family were placed into removal proceedings. *Id.* In February of 2025, an immigration judge ordered Petitioner and his family removed. *Id.* at ¶ 10.

On October 1, 2025, local law enforcement encountered Petitioner at a traffic stop. Exhibit 1 at ¶ 11. ICE responded to the scene and determined that Petitioner was subject to a final order of removal and took him into custody. *Id.* ICE then placed Petitioner in ORR custody. Petitioner was transported to a shelter in Houston, Texas. *Id.*

After being placed at the facility known as Compass Connections Houston on October 2, 2025, ORR contacted Petitioner's potential sponsor on October 10, 2025, to inform him of documentation requirements as well as the sponsorship application process. Exhibit 2, Declaration of Toby Biswas, Assistant Deputy Director, ORR at ¶ 17. On

October 23, 2025, Petitioner's potential sponsor submitted a sponsorship application. *Id.* at ¶ 18. On October 29, 2025, the potential sponsor informed ORR that he had to depart the United States to attend to a family emergency in Mexico. ORR, in response, held off on scheduling the DNA testing and identity documentation verification until the potential sponsor returned from Mexico. *Id.* at ¶ 19. Since then, the potential sponsor's appointment for DNA testing has been pending. *Id.* at ¶ 20. On November 15, 2025, and then again on December 9, 2025, ORR reminded the Petitioner's potential sponsor that a DNA testing and identification documentation verification appointment was still pending and in need of being scheduled. *Id.* at ¶ 21.

Once Petitioner's potential sponsor completes his DNA testing and identity verification appointment, ORR will adjudicate the completed application in accordance with the DNA test result if kinship is verified. Pursuant to ORR's regulations, ORR adjudicates completed sponsorship applications of close relatives within 14 days. Exhibit 2 at ¶ 22 (citing 45 C.F.R. § 410.1205(b)).

IV. STANDARD OF REVIEW

Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil Procedure only if the pleadings, along with evidence, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see also* Fed. R. Civ. P. 56(c). Once a motion has been made, the nonmoving party may not rest upon mere allegations or denials in the pleadings but must present affirmative evidence, setting forth specific facts, to show the existence of a genuine issue for trial. *Celotex Corp.*, 477 U.S. at 322-23. If the moving

party meets its burden, the non-moving party must show a genuine issue of material fact exists. *Id.* at 322. Furthermore, "'only *reasonable* inferences can be drawn from the evidence in favor of the nonmoving party.'" *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 469 n.14 (1992) (emphasis in original) (quoting *H.L. Hayden Co. of N.Y., Inc. v. Siemens Med. Sys., Inc.*, 879 F.2d 1005, 1012 (2d Cir. 1989)).

VI. POLICIES FOR AN UNACCOMPANIED ALIEN CHILD'S SAFE AND TIMELY RELEASE

ORR's goal is to release unaccompanied alien children (UACs) to suitable sponsors where consistent with its statutory mandate to ensure that placement does not result in danger to UACs, to the community, or risk of flight by any UAC. *See, e.g.,* 6 U.S.C. § 279(b)(1), (b)(2)(A)(ii); 8 U.S.C. § 1232(c)(1),(c)(3)(A). In accomplishing this goal, ORR must balance its responsibility to make and record prompt and continuous efforts towards release of UACs, see 45 C.F.R. § 410.1203(a), with concurrent duties to ensure the safety of releases. Exhibit 2 at ¶ 6.

The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), 8 U.S.C. § 1232, prohibits HHS from releasing a child to a proposed custodian unless HHS first "makes a determination that the proposed custodian is capable of providing for the child's physical and mental well-being," which "shall, at a minimum, include verification of the custodian's identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child." 8 U.S.C. § 1232(c)(3)(A). In addition, under its regulations, which implement the

prior *Flores* Settlement Agreement ("FSA"),[2] ORR assesses all potential sponsors (even when the potential sponsor is a child's parent or legal guardian) before making any release determination, including a review of the potential sponsor's strengths, resources, risk factors, and relationship to the UAC. *See, e.g.*, 45 C.F.R. § 410.1201(a); 1202(b) and (c) (implementing Paragraphs 14 and 17 of the FSA, respectively); Exhibit 2 at ¶ 7.

The process for the safe and timely release of an unaccompanied alien child from ORR custody involves several steps, including: the identification of sponsors; sponsor application; interviews; the assessment (evaluation) of sponsor suitability, including verification of the sponsor's identity and relationship to the child (if any), background checks, and in some cases home studies; and post-release planning. *See generally* 45 C.F.R. part 410, subpart C. Also, under ORR sub-regulatory guidance, there are four categories of potential sponsors: (1) Category 1, consisting of parents or legal guardians; (2) Category 2A, consisting of siblings, half-siblings, grandparents, or immediate relatives (such as aunts, uncles, and cousins) who previously served as a primary caregiver, and other biological relatives and relatives through marriage; (3) Category 2B, consisting of immediate relatives (including biological relatives and relatives through marriage) who did not previously serve as

[2] The *Flores* Settlement Agreement (FSA) is a consent decree entered into by the former Immigration and Naturalization Service governing the apprehension, process, and care and custody of alien minors in its custody. The Department of Homeland Security and Department of Health and Human Services are successor agencies to the former INS with respect to various parts of the FSA. However, the FSA has been mostly terminated as to HHS. *See Flores v. Garland*, No. CV 85-4544-DMG (AGRX), 2024 WL 3467715, at *9 (C.D. Cal. June 28, 2024) (conditionally and partially terminating the FSA as to the U.S. Department of Health and Human Services, on the basis of ORR's publication of regulations implementing the Agreement). The few remaining paragraphs of the FSA that still apply to HHS do not pertain to ORR release processes (*e.g.*, sponsor vetting processes).

a primary caregiver; (4) Category 3, consisting of other sponsors, such as distant relatives and unrelated adult individuals. *See* ORR UACB Policy Guide ("UAC Policy Guide"), § 2.2.1.[3]

A potential sponsor must complete a sponsorship application; provide unexpired government-issued identification documentation for the sponsor and any other adults living in the household or identified in a sponsor care plan; and, along with any adult living in his or her household, undergo background checks. UAC Policy Guide §§ 2.2.4, 2.5. All potential sponsors must also submit proof of address, income, sponsor-child relationship, and criminal history documents (if applicable). *Id.* § 2.2.4. ORR does not disqualify potential sponsors based solely on their immigration status or for law enforcement purposes. *Id.* § 2.6.

Pursuant to ORR Field Guidance #27, ORR requires DNA testing to support proof of relationship between a potential sponsor and an unaccompanied alien child where a sponsor purports to be biologically related. Submission of a DNA sample by the potential sponsor is not mandatory. However, refusal to submit a DNA sample may be grounds for ORR to recategorize the sponsorship as an unrelated Category 3 sponsorship and will require enhanced vetting procedures pursuant to ORR Policy. Category 3 potential sponsors must submit evidence that reliably and sufficiently demonstrates a bona fide social relationship with the child and/or the child's family that existed before the child migrated to the United States. UACB Policy Guide, at Section 2.2.4; Exhibit 2 at ¶ 11.

ORR conducts a suitability assessment of the potential sponsor, including a review

[3] ORR policies with respect to UAC are also embodied in the ORR UAC Bureau Policy Guide ("UACB Policy Guide"), which is publicly available on ORR's website at https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide.

of the sponsor's strengths, resources, risk factors, and special concerns within the context of each child's needs, strengths, risk factors, and relationship to the sponsor. *See* 45 C.F.R. § 410.1202. Additionally, in certain circumstances a home study, which consists of interviews, a home visit, and a written report containing the home-study case worker's findings, is performed. *See* 45 C.F.R. § 410.1204; UACB Policy Guide § 2.4.2.

Once the assessment of the potential sponsor is complete, the care provider makes a release recommendation. UACB Policy Guide § 2.7. The recommendation must take into consideration all relevant information, including the report and recommendations from a home study, if conducted, laws governing the process, and other facts in the case. ORR makes the final release decision. *Id.* Release decisions include: (1) approve release to sponsor; (2) approve release with post-release services; (3) conduct a home study before a final release decision; (4) deny release; or (5) remand for further information. *Id.*; *see also* Exhibit 2 at ¶ 13.

VI. ARGUMENT

ORR has lawful custody of Petitioner under its authorities. The arguments in the petition for habeas corpus challenging Petitioner's custody misconstrue the facts and the applicable laws. ORR is working with a potential sponsor to ensure that Petitioner is released to a safe environment. The Court should deny the habeas petition to avoid frustrating the regulatory process, which is intended to ensure the safety of UACs, like Petitioner.

A. ORR has lawful custody of Petitioner

ORR has its own statutory and regulatory authorities that are distinct from DHS's immigration responsibilities. *See R.R. v. Orozco*, No. CV 20-564 KG/GBW, 2020 WL 3542333, at *3 (D.N.M. June 30, 2020) (noting that "[m]ost immigration enforcement

functions are carried out by the [DHS] and its sub-agency, ICE . . . Congress established a different legal framework, however, for the care and custody of UACs"). The ORR UAC program operates under its own statutory authorities—namely the HSA, 6 U.S.C. 279, and TVPRA, 8 U.S.C. 1232. The HSA, 6 U.S.C. 279(g)(2), defines a UAC as a child who has no lawful immigration status in the United States; has not attained 18 years of age; and with respect to whom—(i)there is no parent or legal guardian in the United States; or (ii)no parent or legal guardian in the United States is available to provide care and physical custody. 6 U.S.C. 279(g)(2). ORR has specific responsibilities towards UACs who are in federal custody by reason of their immigration status (including providing care and making "placement" decisions, which includes release decisions. *See generally* 6 U.S.C. 279(b)(1).

Per the TVPRA, ORR can only take custody of children if their custody is transferred to ORR by another federal department or agency, which has identified them as "unaccompanied alien children." *See* 8 U.S.C. 1232(b). Consistent with the HSA, the TVPRA establishes further ORR responsibilities. Among these is the responsibility to protect UACs from harm—including by not releasing UACs to custodians "unless the Secretary of Health and Human Services makes a determination that the proposed custodian is capable of providing for the child's physical and mental well-being." 8 U.S.C. 1232(c)(3)(A). ORR accomplishes this process through a sponsor suitability assessment process. *See generally* 45 C.F.R. part 410, subpart C.

Thus, here, Petitioner was properly taken into ORR custody when DHS identified him as a UAC and placed him with ORR. Exhibit 1 at ¶ 11. Once placed in ORR custody, ORR has the responsibility to protect the minor, which includes not releasing him to a

sponsor until it determines that the proposed sponsor is capable of providing for the child's care and safety. That is exactly what ORR is in the process of doing. Exhibit 2 at ¶¶ 17-21. ORR is working with a potential sponsor to comply with the process to ensure the sponsor is capable of caring for Petitioner. *Id.* None of the arguments set forth in the petition warrant frustrating that process.

B. The *Flores* Settlement does not mandate a different result or process.

The Petition cites to the *Flores* Settlement Agreement, DKt. 8 at ¶¶ 22-25, but fails to acknowledge that the agreement was partially and conditionally terminated as to ORR last June, based on ORR publishing regulations (at 45 CFR part 410) that implement the terms of the agreement that apply to ORR. (The FSA remains applicable in full to DHS). *See Flores v. Garland*, No. CV 85-4544-DMG (AGRX), 2024 WL 3467715, at *9 (C.D. Cal. June 28, 2024) ("The Court conditionally and partially TERMINATES the *Flores* Settlement Agreement as to the U.S. Department of Health and Human Services, except Paragraphs 28A, 32, and 33 of the FSA, and those FSA provisions governing secure, heightened supervision, and out-of-network facilities, as described…"). The remaining provisions of the *Flores* Settlement Agreement that are still applicable to HHS have nothing to do with releasing UACs. The release of UACs, like Petitioner, from ORR custody is governed by 45 CFR part 410, subpart C, not the *Flores* Settlement Agreement. Thus, nothing in the *Flores* Settlement Agreement warrants the granting of the instant habeas petition.

C. The *Zadvydas* framework is also inapplicable.

The *Zadvydas* framework for reviewing the length of detention for removable aliens does not apply here. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). As the Court is aware,

Zadvydas establishes a presumptively constitutional six-month period of detention. *Id.* The Government may detain an alien for longer than six months, but it must show that the alien's removal is likely to occur in the reasonably foreseeable future. *Id.* Petitioner incorrectly directs the Court to *Zadvydas* as a basis for granting the habeas petition. Dkt. 8 at ¶¶ 3, 19. *Zadvydas* does not apply here because UACs have a separate, distinct legal framework governing their detention and care. Moreover, even assuming for the sake of argument that *Zadvydas* did apply, Petitioner has been in ORR custody for less than three months, and ORR is actively working to process a potential sponsor. To the extent that there has been any delay in that process, it has not been caused by ORR. Petitioner's custody in no way violates the principles of *Zadvydas*. The Court should therefore deny the habeas petition and allow the ORR process, which emphasizes the best interests and safety of the UAC, to be completed.

VII. CONCLUSION

For the foregoing reasons, the Petition for Writ of Habeas Corpus should be denied.

Dated: December 15, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 15, 2025, the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

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