

1 TODD BLANCHE
Deputy Attorney General
2 BILAL A. ESSAYLI
First Assistant United States Attorney
3 DAVID M. HARRIS
Assistant United States Attorney
4 Chief, Civil Division
DANIEL A. BECK (Cal. Bar No. 204496)
5 Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
6 Federal Building, Suite 7516
300 North Los Angeles Street
7 Los Angeles, California 90012
Telephone: (213) 894-2574
8 E-mail: Daniel.Beck@usdoj.gov

9 Attorneys for Federal Respondents

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12

13 B.S.Z., et al,

14 Petitioners,

15 v.

16 ANA BABUDAR, et al.,

17 Respondents.
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No. 5:26-cv-00701-AH-PD

**RESPONDENTS' ANSWER TO
HABEAS PETITION**

**[Declaration of Toby Biswas filed
concurrently herewith]**

1 **I. INTRODUCTION**

2 The minor Petitioners in this matter are three unaccompanied alien children
3 (UAC), with different parents, who entered the United States at different times.

4 Reflecting their different entrances and circumstances, they were referred into the
5 care and custody of the Office of Refugee Resettlement (ORR) on May 20, July 15, and
6 July 17, 2025, respectively, which placed them into ORR facilities. The Court has issued
7 an order [Dkt. no. 5] requiring the Respondents to file an answer or motion to dismiss.
8 Respondents hereby answer the Petition.

9 The Petition has multiple serious procedural defects at the outset that must be
10 addressed. First, although it purports to be brought by the “Petitioners,” this habeas
11 action is in fact brought by a putative ‘next friend,’ Erica Santamaria—who appears
12 unrelated to the three minor Petitioners, who in turn are unrelated to each other. The
13 ‘next friend’ complains of delays in the resolution of a sponsorship applications filed by
14 various sponsor applicants who have sought custody of the minors at issue.

15 Procedurally, the correct approach would be for the ‘next friend’ to affirmatively
16 apply for and be granted guardian *at litem* status for the minor petitioners, who she is
17 unrelated to, rather than just presuming to represent them and seek relief on their behalf.
18 There are often significant conflicts of interests in such cases, particularly between the
19 sponsor applicants, the minor children, and the public interest organization that may be
20 attempting to pursue the interests of one or another of the groups. That is not to say that
21 the next friend might not be granted such status here, but it cannot be just *presumed* that
22 she is acting in the best interest of the children involved in the case at issue, as opposed
23 to in the interests and ideologies of other factions involved. The Court must preside over
24 such a determination, before relief can be sought.

25 The second problem is that it is improper to aggregate habeas petitions together in
26 the manner attempted in this action. There is not a clear single issue cutting across all
27 three minor petitioners here, who entered at different times, have different parents, and
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1 different sponsorship applications. Rather, as discussed below, they have widely
2 disparate factual and legal circumstances. Simply asserting that they are minors and their
3 sponsorship applications should be granted is not sufficient to justify the improper
4 joinder attempted here. If it were, we would see aggregated habeas petitions across
5 numerous contexts—but that is not proper.

6 Turning to the merits, as discussed in the declaration of Toby Biswas, filed
7 herewith, there are severe problems with the three sponsorship applications aggregated
8 into this action that must be addressed, including criminal issues, arrests, and safety
9 issues. These problems cannot all be swept under the rug in the name of immediate
10 family reunification.

11 For unaccompanied minors, ORR cannot presume that a subsequent sponsor
12 applicant, even when closely related, is able to adequately and properly take care of their
13 needs. ORR must follow the proper processes and investigation. And while Ms.
14 Santamaria insists that these minors must be released to the sponsor applicants.
15 *immediately*, these children were already separated from that applicant for a lengthy
16 period before they applied as a sponsor to take them into their respective custodies.

17 The applicable process needs to be followed and brought to a timely conclusion
18 that will advantage the minor Petitioners at issue, ensuring their proper care and custody.
19 Having failed to establish unlawful custody, the Petition should be denied.

20 **II. LEGAL FRAMEWORK**

21 **A. The Homeland Security Act of 2002**

22 With the enactment of the HSA, Congress created DHS and transferred most
23 immigration functions formerly performed by INS to DHS and its components, including
24 U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, and
25 U.S. Immigration and Customs Enforcement (“ICE”). See HSA; Department of
26 Homeland Security Reorganization Plan Modification of January 30, 2003, H.R. Doc.
27 No. 108-32 (2003) (also set forth as a note to 6 U.S.C. § 542). Notably, Congress
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1 transferred to [ORR] the responsibility for the care of any UAC “who [is] in Federal
2 custody by reason of [his or her] immigration status.” 6 U.S.C. §§ 279(a), (b)(1)(A). The
3 HSA also transferred to ORR the responsibility for making all placement decisions for
4 UACs, required ORR to coordinate these placement decisions with DHS, and required
5 ORR to ensure that UACs are not released upon their own recognizance. See 6 U.S.C. §§
6 279(b)(1)(C), (D), (b)(2).

7 **B. The Trafficking Victims Protection Reauthorization Act of 2008**

8 The TVPRA, which was signed into law on December 23, 2008, contains statutory
9 protections relating to unaccompanied alien children (UACs) and codified protections
10 related to the processing and detention of UACs. The TVPRA built on the split of duties
11 in the HSA and further requires that “the care and custody of all unaccompanied alien
12 children, including responsibility for their detention, where appropriate, shall be the
13 responsibility of the Secretary of Health and Human Services.” 8 U.S.C. § 1232(b)(1). It
14 also provides that in most instances, “any department or agency of the Federal
15 Government that has an unaccompanied alien child in custody shall transfer the custody
16 of such child to the Secretary of Health and Human Services not later than 72 hours after
17 determining that such child is an unaccompanied alien child.” 8 U.S.C. § 1232(b)(3).

18 The TVPRA makes clear that HHS is responsible for all placement decisions for
19 UACs in its custody, and for conducting suitability assessments for those placements. 8
20 U.S.C. § 1232(c). It requires that UACs in HHS custody be “promptly placed in the least
21 restrictive setting that is in the best interest of the child,” and it provides guidelines for
22 the reunification of UACs with their families by HHS. 8 U.S.C. § 1232(c)(2), (3).

23 **C. The Foundational Rule (2024)**

24 In April 2024, ORR promulgated the Unaccompanied Children Program
25 Foundational Rule, codified at 45 C.F.R. Part 410, to establish comprehensive
26 regulations governing its UAC program. The Foundational Rule also implements
27 provisions of the *Flores Settlement Agreement* (“FSA”) relevant to ORR’s care and
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1 custody of UAC and conditionally and partially terminated the FSA as to ORR in June
2 2024. Effective July 1, 2024, the Foundational Rule formalized previously informal
3 procedures, including those related to ORR's release policies and practices.

4 The Foundational Rule provides that ORR identifies a standard program
5 placement for the UAC upon notification from any federal department or agency that a
6 child in its custody is an UAC and therefore must be transferred to ORR custody. 45
7 C.F.R. § 410.1101(b). ORR works with the referring federal government department
8 or agency to accept transfer of custody of the UAC, consistent with the statutory
9 requirements at 8 U.S.C. § 1232(b)(3) and 45 C.F.R. § 410.1101(c). ORR places each
10 UAC in the least restrictive setting that is in the best interest of the child and appropriate
11 to the unaccompanied child's age and individualized needs. 45 C.F.R. § 410.1103(a).
12 ORR may place a child in a shelter facility, foster home or group home (which may be
13 therapeutic), heightened supervision facility or secure facility (including residential
14 treatment centers), or other care facility that can provide for their specific
15 individualized needs, including an out-of-network ("OON") placement (which may be
16 restrictive or non-restrictive). 45 C.F.R. § 410.1102; UAC Policy Guide § 1.2. ORR
17 also considers several factors that are relevant to the UAC's placement, including but
18 not limited to: danger to self; danger to the community/others; runaway risk; trafficking
19 in person or other safety concerns; age; and gender. 45 C.F.R. § 410.1103(b).

20 While the UAC remains in ORR custody, ORR seeks to release the UAC from
21 its custody "[s]ubject to an assessment of sponsor suitability," 45 C.F.R. § 410.1201,
22 which includes "verification of the potential sponsor's identity," 45 C.F.R. §
23 410.1202(b), "verification of the employment, income, or other information provided
24 by the potential sponsor as evidence of the ability to support the child," 45 C.F.R. §
25 410.1202(c), and "[i]n all cases, ORR shall require background and criminal records
26 checks," *id.*, which may include a criminal history check based on fingerprints. The
27 Foundational Rule reinforces congressional intent articulated in the HSA and TVPRA
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1 that HHS ensure UAC protection from human traffickers and release UAC only to
2 those sponsors capable of protecting their well-being. 45 C.F.R. § 410.1003.

3 **D. ORR Release Policies and Practice**

4 To carry out its statutory mandate under the HSA and TVPRA, ORR has
5 developed policies and procedures for identifying, and conducting suitability
6 assessments of, potential sponsors. These procedures are generally set out in the ORR's
7 publicly available UAC Bureau Policy Guide (UAC Policy Guide). *See* ORR
8 Unaccompanied Alien Children Bureau Policy Guide, *available at*
9 <https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide>. A
10 full assessment of a potential sponsor's suitability is particularly appropriate because
11 ORR is not a law or immigration enforcement agency and lacks the authority to hold
12 individuals accountable by reassuming care if the sponsor abuses or neglects a child
13 after a UAC has been released from ORR custody. Rather, ORR only takes children
14 into its custody upon referral by another federal agency, as described in statute. In this
15 regard, ORR is also very different from state child welfare agencies, which typically
16 retain such authority post-placement. Accordingly, ORR must front-load child safety
17 considerations in its identity verification and sponsor-vetting policies.

18 In light of ORR's obligation to protect UAC from smugglers, traffickers, and
19 others who may seek to victimize them, "safe and timely release . . . involves several
20 steps, including: the identification of sponsors; sponsor application; interviews; the
21 assessment (evaluation) of sponsor suitability, including verification of the sponsor's
22 identity and relationship to the child (if any), background checks, and in some cases
23 home studies; and post-release planning." UAC Policy Guide § 2.1. There are four
24 categories of potential sponsors: (1) Category 1, consisting of parents or legal
25 guardians; (2) Category 2A, consisting of siblings, half-siblings, grandparents,
26 immediate relatives (such as aunts, uncles, and cousins) who previously served as a
27 primary caregiver, and other biological relatives and relatives through marriage; (3)

1 Category 2B, consisting of immediate relatives (including biological relatives and
2 relatives through marriage) who did not previously serve as a primary caregiver; (4)
3 Category 3, consisting of other sponsors, such as distant relatives and unrelated adult
4 individuals. UAC Policy Guide § 2.2.1. ORR (through its care providers) conducts a
5 suitability assessment of the potential sponsor, including a review of the sponsor's
6 strengths, resources, risk factors, and special concerns within the context of each child's
7 needs, strengths, resources, risk factors, and relationship to the sponsor. UAC Policy
8 Guide §§ 2.2.2, 2.4.

9 A potential sponsor must complete a Family Reunification Application ("FRA"),
10 provide unexpired government-issued identification documentation for the sponsor and
11 any other adults living in the household or identified in a sponsor care plan, and, along
12 with any adult living in his or her household, undergo a background check. UAC Policy
13 Guide §§ 2.2.4, 2.5.

14 All potential sponsors must also submit proof of address, income, sponsor-child
15 relationship, and criminal history documents (if applicable). UAC Policy Guide § 2.2.4.
16 Additionally, in certain circumstances a home study, which consists of interviews, a home
17 visit, and a written report containing the home-study case worker's findings, is performed.
18 UAC Policy Guide § 2.4.2.

19 Once the assessment of the potential sponsor is complete, the care provider makes
20 a release recommendation. UAC Policy Guide § 2.7. The recommendation must take
21 into consideration all relevant information, including the report and recommendations
22 from a home study, if conducted, laws governing the process, and other facts in the
23 case. ORR makes the final release decision. UAC Policy Guide § 2.7. Release
24 decisions include: (1) approve release to sponsor; (2) approve release with post-release
25 services; (3) conduct a home study before a final release decision; (4) deny release; or
26 (5) remand for further information. UAC Policy Guide § 2.7. ORR denies release if: (1)
27 the potential sponsor is not willing or able to provide for the child's physical or mental
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1 well-being; (2) the potential sponsor is not willing to complete the mandatory
2 fingerprint check; (3) the physical environment of the home presents a risk to the
3 child's safety or well-being; or (4) release of the UAC would present a risk to him or
4 herself, the sponsor, household, or community. UAC Policy Guide § 2.7.4.

5 **III. FACTUAL AND PROCEDURAL BACKGROUND**

6 As noted above, the three minor Petitioners entered the United States as
7 unaccompanied children at different times.

8 As set forth in the Declaration of Toby Biswas, filed herewith:

9 **B.S.Z.'s Case Status**

10 B.S.Z. entered ORR custody on May 20, 2025, and transferred to an ORR shelter
11 in Fullerton, California. B.S.Z. was later transferred to Marsell Wellness Center-
12 Riverside on October 15, 2025. *See* Biswas Declaration, ¶ 19. At the time of this initial
13 placement, ORR began its normal sponsorship verification process to release B.S.Z. to
14 a viable sponsor. *Id.*

15 On July 10, 2025, sponsor N.Z.L., B.S.Z.'s parent, submitted to DNA testing
16 and also submitted her fingerprints which confirmed that she is B.S.Z.'s biological
17 mother. *Id.* ¶ 20.

18 As of February 23, 2026, N.Z.L. has received waivers from ORR relating to
19 other requirements for her sponsorship, specifically personal identifying information
20 and other application materials necessary for release. *Id.* ¶ 21.

21 On February 23, 2026, ORR received a home study report for N.Z.L. *Id.* ¶ 22.
22 During the home study, ORR learned of safety and suitability concerns that will need
23 to be resolved before an approval may be issued. Relatedly, as a required part of the
24 home study, ORR is waiting on the return of a Child Abuse and Neglect ("CAN")
25 report before making a final determination as it pertains to the sponsor's application.
26 *Id.*

27 ORR continues to work towards completing the sponsor vetting process and
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1 making a determination regarding whether the sponsor is capable of providing for the
2 physical and mental well-being of the child and whether his release would result in a
3 danger to himself or the community. *Id.* ¶ 23.

4 **A.M.C.R.'s Case Status**

5 A.M.C.R. entered ORR custody on July 15, 2025. *Id.* ¶ 24. At the time of initial
6 placement, ORR began its normal sponsorship verification processes to release
7 A.M.C.R. to a viable sponsor, his mother, C.J.R.R. *Id.*

8 On July 30, 2025, C.J.R.R. submitted to DNA testing, confirming that she is
9 A.M.C.R.'s parent. *Id.* ¶ 25. In following ORR guidance, C.J.R.R. also submitted her
10 fingerprints. *Id.*

11 On August 6, 2025, ORR received a home study report with a positive
12 recommendation. *Id.* ¶ 26.

13 The case was delayed at least in part due to C.J.R.R. having submitted false
14 documentation during her application for sponsorship. *Id.* ¶ 27. This action required
15 the submission of a waiver per ORR Policy Guide Section 2.2.4. *Id.*

16 During its sponsor vetting process, ORR learned that A.M.C.R.'s sponsor was
17 arrested and detained by Department of Homeland Security ("DHS"), Homeland
18 Security Investigations ("HSI") on February 14, 2026. *Id.* ¶ 28.

19 Because the sponsor has been detained by HSI, she is no longer available to
20 provide for the care and custody of A.M.C.R. *Id.* ¶ 29. As such, ORR currently plans
21 to issue a denial letter in this case, subject to any immediate change in the sponsor's
22 circumstances. *Id.*

23 ORR has made contact with A.M.C.R.'s family members in an attempt to
24 identify a new sponsor. *Id.* ¶ 30.

25 **K.M.O.R.'s Case Status**

26 K.M.O.R. entered ORR custody on July 17, 2025, and transferred to a shelter in
27 Fullerton, California. *Id.* ¶ 31. K.M.O.R. was later transferred to Marsell Wellness
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1 Center-Riverside on October 15, 2025. *Id.* At the time of initial placement, ORR began
2 its normal sponsorship verification processes to release K.M.O.R. to a viable sponsor.
3 *Id.*

4 On August 12, 2025, the sponsor, E.R.G., submitted to a DNA test which
5 confirmed that E.R.G. is K.M.O.R.'s biological mother. *Id.* ¶ 32. E.R.G. also submitted
6 her fingerprints to ORR. *Id.*

7 On November 28, 2025, a background check revealed links to a human
8 smuggling case currently being investigated by HSI. *Id.* ¶ 33. ORR later learned that
9 E.R.G. received a letter from HSI instructing her to appear for an interview with HSI
10 on March 16, 2026. *Id.* ORR also received a negative home study report pertaining to
11 human trafficking which raised concerns about placing K.M.O.R. with E.R.G. *Id.*

12 ORR is in the process of issuing a formal denial of E.R.G.'s application, and will
13 work to identify another suitable sponsor. *Id.* ¶ 34.

14 **IV. THE PETITION IMPROPER JOINS PETITIONERS WITH DISPARATE**
15 **FACTUAL CIRCUMSTANCES INTO A MASS PETITION, AND THEY**
16 **SHOULD BE SEVERED UNDER THE FRCP**

17 Rule 21 is explicit that the Court "may at any time, on just terms, add or drop a
18 party" or "may also sever any claim against a party." Fed. R. Civ. P. 21; *Am. Oversight*
19 *v. Dep't Veterans Affairs*, 326 F.R.D. 23, 27 (D.D.C. 2018) (noting that Rule 21
20 "authorizes the severance of any claim, even without a finding of improper joinder,
21 where there are sufficient other reasons for ordering a severance"); *Asgari v. USCIS*, No.
22 22-cv-01888-FWS-KES, 2023 WL 6785801, at *4 (C.D. Cal. July 31, 2023) (holding
23 that joinder of multiple immigration petitions filed at different times and resulting in
24 different interactions with the agency was improper).

25 As discussed above, the minor Petitioners here are not similarly situated, including
26 (among other things), having different entrances into the United States, different custody
27 locations, different applications by different sponsors, different investigations, and
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1 different lengths of time at issue, as well as different status of adjudication. Joinder is
2 inappropriate.

3 Judicial economy also favors severance because “joining such diverse and varied
4 claims would also severely prejudice Defendants and work a disservice to the Court,”
5 *Padron v. Onewest Bank*, No. 2:14-CV-01340-ODW, 2014 WL 1364901, at *2 (C.D.
6 Cal. Apr. 7, 2014). Under such circumstances, judicial economy militates in favor of
7 severance. *Cf. D’Angelis v. Bank of Am., N.A.*, 2014 WL 202567, at *3 (E.D.N.Y. Jan.
8 16, 2014) (holding that “joinder of over 100 different claims . . . does not serve the
9 interest of judicial economy” because “each Plaintiff’s individual claims will require
10 distinct . . . documentary proof”).

11 Respondents thus respectfully request that the three Petitioners be severed.

12 **V. THE PETITION FAILS TO ESTABLISH UNLAWFUL CUSTODY BY**
13 **ORR**

14 The Petition essentially presents a claim for unreasonable delay in ORR’s
15 processing of the three different applications for custody by three different sponsors over
16 the three minor Petitioners. That delay complaint, however, does not suffice to establish
17 that the current custody arrangement is *unlawful* under habeas jurisdiction principles for
18 the three Petitioners, considering their varying specific circumstances relative to their
19 sponsor applicants.

20 To be clear, the three Petitioners were already unaccompanied when they entered
21 the United States at various times and dates; they were not then in their respective
22 parents’ care.

23 They then were referred into ORR’s custody at different times, specifically May
24 20, 2025 (B.S.Z.), on July 15, 2025 (A.M.C.R.) and July 17, 2025 (K.M.O.R.)

25 In each of these three instances, ORR took prompt steps to see if it would be
26 possible to unite them with their parent as a prospective sponsor. *See Biswas Decl.*, ¶¶
27 19, 24, 31.

1 For the three minors and their situations, relative to ORR going through the
2 sponsorship vetting process, none of them involve a lack of recent agency activity that
3 would be consistent with an unreasonable delay claim, much less unlawful custody.

4 To the contrary, A.M.C.R.'s sponsor was arrested and detained by HSI on
5 February 14, 2026. *See* Toby Biswas Decl., ¶ 28. Because the sponsor has been
6 detained by HSI, she is no longer available to provide for the care and custody of
7 A.M.C.R. *Id.* As such, ORR currently plans to issue a denial letter in this case, subject
8 to any immediate change in the sponsor's circumstances. *Id.* ORR has made contact
9 with A.M.C.R.'s family members in an attempt to identify a new sponsor. *Id.* ¶ 30.

10 K.M.O.R. likewise involves recent significant new events. On November 28,
11 2025, a background check revealed links to a human smuggling case currently being
12 investigated by HSI. *Id.* ¶ 33. ORR later learned that E.R.G. received a letter from HSI
13 instructing her to appear for an interview with HSI on March 16, 2026. *Id.* ORR also
14 received a negative home study report pertaining to human trafficking which raised
15 concerns about placing K.M.O.R. with E.R.G. *Id.* ORR is in the process of issuing a
16 formal denial of E.R.G.'s application, and will work to identify another suitable
17 sponsor. *Id.* ¶ 34.

18 B.S.Z., conversely, is near the end of the sponsor vetting process. On February
19 23, 2026, ORR received a home study report for N.Z.L. *See* Biswas Decl., ¶ 22. During
20 the home study, ORR learned of safety and suitability concerns that will need to be
21 resolved before an approval may be issued. Relatedly, as a required part of the home
22 study, ORR is waiting on the return of a Child Abuse and Neglect ("CAN") report
23 before making a final determination as it pertains to the sponsor's application. *Id.*

24 The Petition does not meet the requirement of showing *unlawfulness* in custody.
25 Nowhere does it establish that the current custody arrangement is contrary to the law.
26 The Petition argues that the Petitioners are in "detention," but being in federal custody of
27 any kind is not inherently "detention" (to take an obvious example, individuals under
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1 supervised release are in ‘custody’ but they are not detained). Unaccompanied children
2 may be placed by ORR in the care of various facility types pursuant to regulation,
3 “including but not limited to shelters, group homes, individual family homes, heightened
4 supervision facilities, or secure facilities, including RTCs” 45 CFR § 410.1102. Not
5 being in a single preferred sponsor applicant’s custody does not constitute “detention.”
6 Indeed, the Petitioners were not in their parents’ custody when they applied as a sponsor.

7 The Petition depicts the Petitioners’ status of not being within their respective
8 biological parents’ custody as if that is inherently an intolerable deprivation of their
9 liberty. Placing children into the care of immediate family members is normally an ideal
10 outcome when possible, surely. But insofar as the Petition portrays the existing status
11 quo as a grave violation of their liberty, again, the minor Petitioners were already
12 unaccompanied and separated from their parents when they entered the United States.
13 That status quo was not the government’s decision. It was, presumably, their parents’
14 decision. It was how they arrived into the United States. In response, ORR promptly
15 took affirmative steps to locate sponsors, including biological parents, and to facilitate
16 the application process so that they could be *released* to those potential sponsors. *See*
17 Toby Biswas Declaration.

18 Insofar as the TRO Application portrays any delay in processing and deciding the
19 FRA as if that is inherently endless and unlawful, it is noteworthy that other recent
20 habeas petition filed in this District, involving minor petitioners from multiple families
21 making similar claims against ORR, almost all of the many petitioners were thereafter
22 released to sponsors, on a relatively prompt timeframe, mooted their claims as their
23 applications were resolved in due course. *See G.M.M. et al. v. Jessica Beltran et al.*,
24 5:26-cv-00085-SVW-PVC. The application process does take time, certainly,
25 particularly when specific sponsor applicants have significant problems or shifting life
26 circumstances (as with MRA here), but that does not render the custody of ORR
27 unlawful, nor does it establish an unreasonable delay warranting immediate grant of

1 custody to a prospective sponsor.

2 While the 'next friend' here portrays any delayed processing in a sponsorship
3 cases as if that was inherently endless and a violation of Due Process, that is not true,
4 and it again ignores the preexisting underlying state of affairs that created the status quo:
5 Unaccompanied minors entering the United States without guardians, before being
6 referred by another federal agency to ORR.

7 The timely processing of applications is an important goal, particularly when it
8 bears on children. But a habeas petition is not a mechanism for asserting a delayed
9 processing claim. The Petition wholly fails to meet its extremely heavy burden of
10 proving *unlawfulness* in the three Petitioners' current different custody arrangements.

11 **VI. CONCLUSION**

12 The Petition should be denied.

13 Dated: February 25, 2026

Respectfully submitted,

14
15 TODD BLANCHE
Deputy Attorney General
16 BILAL A. ESSAYLI
First Assistant United States Attorney
17 DAVID M. HARRIS
Assistant United States Attorney
18 Chief, Civil Division
DANIEL A. BECK
19 Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
20

21 /s/ Daniel A. Beck
DANIEL A. BECK
22 Assistant United States Attorney
23 Attorneys for Federal Respondents
24
25
26
27
28