

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

E.F.E.L. a minor,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 26 C 2057
	)	
KRISTI NOEM, Secretary of Homeland	)	Judge Coleman
Security et. al.	)	
	)	
Respondents.	)	
	)	
	)	

**MEMORANDUM IN OPPOSITION TO
PETITION FOR A WRIT OF HABEAS CORPUS**

This is a habeas case where petitioner E.F.E.L. (a 15-year-old citizen of Guatemala), seeks immediate release from government custody so that he can be placed with his brother, who does not have any sponsorship application pending. *See generally* Dkt. 1 (“Pet.”). Petitioner’s first encounter with the Office of Refugee Resettlement (“ORR”), an office within the United States Department of Health and Human Services (“HHS”), was on January 24, 2025, where he remained in ORR custody until his release to his brother, a category 2 sponsor, on March 2, 2025. Pet. ¶ 18; Declaration of Toby Biswas (“Biswas Decl.”) ¶ 18. But on December 3, 2025, petitioner was detained by Tennessee Highway Patrol and subsequently placed in an ORR facility again (where he remains). Pet. ¶ 8; Biswas Decl. ¶ 19. ORR immediately reached out to the petitioner’s past sponsor to determine the possibility of release to the past sponsor’s custody. Decl. Biswas ¶ 19. However, the sponsor failed to complete a sponsorship application and subsequently withdrew himself from sponsorship consideration on March 6, 2026. *Id.* ¶ 20.

Although ORR previously released the petitioner to his brother last March, the requirements for ORR’s custody determinations have changed since that time. Furthermore, the

past sponsor withdrew from sponsorship. Consequently, E.F.E.L.'s petition should be denied because ORR is complying with applicable statutes and regulations, which make it responsible for the care and custody of Unaccompanied Alien Children ("UACs"), and require it to make placement determinations for all who are in federal custody by reason of their age and immigration status. ORR is acting consistently with the law by requiring the sponsor to undertake a sponsorship application, subject to ORR approval, before releasing E.F.E.L., and there is currently no application on file from any sponsor. Because statutes require such vetting of sponsorship applications, the habeas petition here should be denied.

Background

I. Statutory and Regulatory History

A. The Homeland Security Act of 2002 ("HSA")

In 2002, Congress enacted the HSA, Pub. L. No. 107-296, 116 Stat. 2135 (2002) (codified in relevant part at 6 U.S.C. § 279), which abolished the Immigration and Naturalization Service ("INS") and transferred responsibility for the care and placement of UACs from INS to ORR. 6 U.S.C. §§ 279(a), (b)(1)(A), (g)(2). The HSA defines a UAC as "a child who—(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) 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). Further, it assigns ORR broad authority over the care and custody of UAC while they are in federal custody due to their immigration status, including coordinating their care and placement, ensuring their best interests in custodial decisions and that they are protected from smugglers, traffickers, and others who might seek to victimize and exploit UAC. 6 U.S.C. § 279(b)(1)(A) & (b)(2)(A)(ii).

B. The Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA")

Congress enacted the TVPRA in 2008 to strengthen protections for UACs and support their safe repatriation or appropriate placement within the United States. The statute, consistent with the HSA, makes HHS responsible for the care and custody of UACs. 8 U.S.C. § 1232(b)(1). It also requires the HHS Secretary to decide that a sponsor “is capable of providing for the child’s physical and mental well-being.” 8 U.S.C. § 1232(c)(3)(A). This safety and suitability determination must “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.” *Id.* The TVPRA also requires ORR to prioritize the safety and well-being of UACs while in its care and upon release. One of the methods of doing so as contemplated by the statute is to coordinate with the United States Department of Homeland Security (“DHS”) for available vetting information—including from immigration databases: “Not later than 2 weeks after receiving a request from the Secretary of Health and Human Services, the Secretary of Homeland Security shall provide information necessary to conduct suitability assessments from appropriate Federal, State, and local law enforcement and immigration databases.” 8 U.S.C. § 1232(c)(3)(C). These responsibilities are carried out through cooperative agreements and contracts with care providers under ORR policies and oversight. *See* 8 U.S.C. § 1232(i); 31 U.S.C. § 6305.

C. The Foundational Rule

In April 2024, ORR promulgated the *Unaccompanied Children Program Foundational Rule* (hereinafter, “Foundational Rule”), codified at 45 C.F.R. part 410, to establish comprehensive regulations governing its UAC program. The Foundational Rule also implements provisions of the *Flores* Settlement Agreement (“FSA”) relevant to ORR’s care and custody of UAC and

conditionally and partially terminated the FSA as to ORR in June 2024.¹ *Cf. Reno v. Flores*, 507 U.S. 292 (1993) (upholding INS regulations about the release of UACs to properly vetted sponsors). Effective July 1, 2024, the Foundational Rule formalized previously informal procedures, including those related to ORR's release policies and practices.

The Foundational Rule provides that ORR identifies a standard program placement for the UAC upon notification from any federal department or agency that a child in its custody is a UAC and therefore must be transferred to ORR custody. 45 C.F.R. § 410.1101(b). ORR then works with the referring federal government department or agency to accept transfer of custody of the UAC, consistent with the statutory requirements at 8 U.S.C. § 1232(b)(3) and 45 C.F.R. § 410.1101(c). ORR places each UAC in the least restrictive setting that is in the best interest of the child and appropriate to the unaccompanied child's age and individualized needs. 45 C.F.R. § 410.1103(a). ORR may place a child in a shelter facility, foster home or group home (which may be therapeutic), heightened supervision facility or secure facility (including residential treatment centers), or other care facility that can provide for their specific individualized needs, including an out-of-network ("OON") placement (which may be restrictive or non-restrictive). 45 C.F.R. § 410.1102; *see also ORR Unaccompanied Alien Children Bureau Policy Guide* ("UAC Policy Guide") § 1.2, <https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide> (last accessed Dec. 12, 2025). ORR also considers several factors relevant to the UAC's placement, including but not limited to: danger to self; danger to the community/others; runaway risk; trafficking in person or other safety concerns; age; and gender. 45 C.F.R. § 410.1103(b).

ORR is required to make and record the prompt and continuous efforts on its part towards

¹ *See Flores v. Garland*, No. 85-cv-4544, 2024 WL 3467715, at *9 (C.D. Cal. June 28, 2024).

release of children in its custody to appropriately vetted sponsors. *See* 45 C.F.R. § 410.1203(a). All individuals seeking to sponsor a child in ORR custody (notably, even a UAC’s parent or legal guardian) must undergo the sponsor assessment process, consistent with ORR’s statutory responsibilities. *See* 8 U.S.C. § 1232(c)(3)(A) (“an unaccompanied alien child may not be placed with a person or entity 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”); 45 C.F.R. § 410.1201(a), 1202(b). This understanding was further reinforced in the recently enacted One Big Beautiful Bill Act of 2025, Pub. L. No. 119-21, title VIII, subtitle H, section 87001(c)(1) (2025) (defining “potential sponsor” as “an individual or entity who applies for the custody of an unaccompanied alien child”).

The suitability assessment includes “verification of the potential sponsor’s identity,” 45 C.F.R. § 410.1202(b), “verification of the employment, income, or other information provided by the potential sponsor as evidence of the ability to support the child,” 45 C.F.R. § 410.1202(c), and “[i]n all cases, ORR shall require background and criminal records checks,” *id.*, which may include a criminal history check based on fingerprints. The Foundational Rule thus reinforces congressional intent articulated in the HSA and TVPRA that HHS ensure UAC protection from human traffickers and release UACs only to those sponsors capable of protecting their well-being. *See* 45 C.F.R. § 410.1003; *see also* 8 U.S.C. § 1232(c)(3)(A)–(C) (requiring such vetting be conducted, along with potential home studies and further information sharing with DHS to effectuate that process).

D. Human Trafficking and UAC Sponsorship Fraud

In December 2022, the U.S. Senate’s Committee on Homeland Security and Governmental

Affairs published a report detailing the inadequate treatment of UACs in federal care and the insufficient safeguards to ensure they are not trafficked or abused following their release. *See* United States Senate Committee on Homeland Security and Governmental Affairs, Minority Staff Report, *Federal Care of Unaccompanied Children: Minors Remain Vulnerable to Trafficking and Abuse* (“Minority Report”), https://www.govinfo.gov/content/pkg/GOVPUB-Y4_G74_9-PURL-gpo190271/pdf/GOVPUB-Y4_G74_9-PURL-gpo190271.pdf (last accessed Mar. 13, 2026). A congressional subcommittee launched its investigation in 2015, following reports that ORR placed eight children with members of a human trafficking ring that forced the children to work on an egg farm for 12 hours a day, six or seven days a week. *See id.* at 26.

In the December 2022 report, it was noted that despite the increased number of UACs entering the United States in 2021 and 2022, ORR’s completion of background checks significantly declined from FY 2019. *See id.* at 35–37. Moreover, the report identified the lack of adequate background checks for potential sponsors and the waiver of background check requirements on household members, even when releasing a child to their parent, as areas where additional safeguard measures were necessary. *See id.* at 37–45. It was therefore recommended that ORR update the UAC Policy Guide to indicate that if a potential sponsor or household member refuses to comply with required background checks, ORR should prohibit further consideration of the release of a child into their custody until such a check could be completed. *See id.* at v.

In March 2023, after a Florida grand jury published a report outlining over 100 allegations concerning deficiencies in ORR’s UAC Program, ORR established an Integrity & Accountability (“I&A”) Team to detect, prevent, mitigate, and report fraud and exploitation perpetrated by sponsors, parents, and UAC. *See* Office of Refugee Resettlement, Administration for Children and Families, *Recommendations to Combat Trafficking and Fraud in the UAC Program* (“ORR

Recommendations”) at 1–3 (Feb. 4, 2025), <https://www.scribd.com/document/830798358/HHS-ORR-Report> (last accessed Mar. 13, 2026). The I&A Team identified several instances of fraudulent sponsorship applications, document falsifications, and patterns of human trafficking and exploitation. *See id.* at 3–8. For example, the I&A Team identified instances of children and sponsors using altered birth certificates or unaltered birth certificates belonging to another person. *See id.* at 7. The I&A Team also found that such fraud often involved collusion with others, including a family member in the child’s country of origin. *See id.* In one instance, the I&A Team identified 10 UACs who were released to sponsors who committed intentional document fraud in October 2024. *See id.*

The I&A Team also found cases of fraud, abuse, and extortion by prospective sponsors. For example, the I&A Team reported that in late February 2024, an individual sponsor using multiple identities and addresses to sponsor or attempt to sponsor multiple children in Cleveland, Ohio was discovered after an investigation of potential child abuse and trafficking. *See id.* at 7–8. The individual successfully sponsored a 15-year-old female UAC whose allegations of sexual abuse and trafficking led to charges of rape against the sponsor. *See id.* at 7. In another case, the I&A Team found that a woman and her partner attempted to sponsor a total of 15 UAC over a five-year period by using multiple aliases, with the aliases only discovered when the sponsor underwent fingerprinting. *See id.* The I&A Team also found cases of individuals demanding payment to sponsor a UAC. *See id.* at 8. In one scheme, there were 17 reported instances of successful extortion totaling \$27,694. *See id.* Despite this background, ORR’s data revealed that less than 1% of sponsorship applications had been denied in recent years. *See id.*

E. ORR Release Policies and Practices

To carry out its statutory mandate under the HSA and TVPRA, and consistent with the

Foundational Rule, ORR has developed policies and procedures for identifying, and conducting suitability assessments of, potential sponsors. These procedures are generally set out in ORR's publicly available UAC Policy Guide (mentioned above). A full assessment of a potential sponsor's suitability is particularly appropriate because ORR is not a law or immigration enforcement agency and lacks the authority to hold individuals accountable by reassuming care if the sponsor abuses or neglects a child after a UAC has been released from ORR custody. Biswas Decl. at ¶ 9. Rather, ORR only takes children into its custody upon referral by another federal agency, as described in statute. *See* 8 U.S.C. § 1232(b)(3) (requiring, absent exceptional circumstances, that any agency of the federal government transfer the custody of a child to HHS no later than 72 hours after determining that the child is a UAC). In this regard, ORR is also very different from state child welfare agencies, which typically retain such authority post-placement. Biswas Decl. ¶ 9. Accordingly, ORR must front-load child safety considerations in its identity verification and sponsor-vetting policies. *Id.*

In light of ORR's obligation to protect UACs from smugglers, traffickers, and others who may seek to victimize them, "safe and timely release . . . 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." UAC Policy Guide § 2.1; Biswas Decl. ¶ 8. 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, 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 a primary caregiver; (4) Category 3, consisting of other sponsors, such as distant relatives and unrelated adult individuals. UAC Policy Guide § 2.2.1; Biswas Decl. ¶ 10. ORR (through its care providers) conducts a suitability assessment of the potential sponsor, including a review of the sponsor's strengths, resources, risk factors, and special concerns within the context of each child's needs, strengths, resources, risk factors, and relationship to the sponsor. UAC Policy Guide §§ 2.2.2, 2.4; Biswas Decl. ¶ 7.

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 household, undergo a background check. UAC Policy Guide §§ 2.2.4, 2.5; Biswas Decl. ¶ 11. All potential sponsors must also submit proof of address, income, sponsor-child relationship, and criminal history documents (if applicable). UAC Policy Guide § 2.2.4; Biswas Decl. ¶ 11. Additionally, in certain circumstances a home study, which consists of interviews, a home visit, and a written report containing a case worker's findings, is performed. UAC Policy Guide § 2.4.2; Biswas Decl. ¶ 13.

Once the assessment of the potential sponsor is complete, the care provider makes a release recommendation to ORR. UAC Policy Guide § 2.7; Biswas Decl. ¶ 14. 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. Biswas Decl. ¶ 11. ORR makes the final release decision. UAC Policy Guide § 2.7; Biswas Decl. ¶ 11. 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. UAC Policy Guide § 2.7; Biswas Decl. ¶ 14. The Policy Guide describes

various circumstances under which ORR will or may deny release. Generally, ORR denies release if: (1) the potential sponsor is not willing or able to provide for the child's physical or mental well-being; (2) the potential sponsor is not willing to complete the mandatory fingerprint check; (3) the physical environment of the home presents a risk to the child's safety or well-being; or (4) release of the UAC would present a risk to him or herself, the sponsor, household, or community. UAC Policy Guide § 2.7.4; Biswas Decl. ¶ 15.

F. OBBBA's Section 87001

Concerned about the past abuses of the sponsorship program discussed above, ORR's release policies regarding background checks were effectively ratified by Congress in July 2025. Specifically, OBBBA's Section 87001 includes the following list of things that ORR "shall" review when determining appropriateness of release:

(1) background checks on potential sponsors, which shall include—

- A. the name of the potential sponsor and of all adult residents of the potential sponsor's household;
- B. the social security number or tax payer identification number of the potential sponsor and of all adult residents of the potential sponsor's household;
- C. the date of birth of the potential sponsor and of all adult residents of the potential sponsor's household;
- D. the validated location of the residence at which the unaccompanied alien child will be placed;
- E. an in-person or virtual interview with, and suitability study concerning, the potential sponsor and all adult residents of the potential sponsor's household;
- F. contact information for the potential sponsor and for all adult residents of the potential sponsor's household; and
- G. the results of all background and criminal records checks for the potential sponsor and for all adult residents of the potential sponsor's household, which shall include, at a minimum, an investigation of the public records sex offender registry, a public records background check, and a national criminal history

check based on fingerprints;

OBBA, Public Law 119-21, 139 Stat. 72. Section 87001 (July 4, 2025). These requirements ensure that ORR's obligation to undertake a full assessment of each potential sponsor's suitability is completed before ORR releases the child from its custody.

II. Factual and Procedural History

As briefly discussed above, the petitioner first entered ORR custody on January 24, 2025, and was released to his brother, a category 2 sponsor on March 2, 2025. Pet. ¶ 18; Biswas Decl. ¶ 18. On December 3, 2025, petitioner was detained by HSI and, from there, was placed into a facility controlled by the ORR. Pet. ¶ 8. This was because, as a minor without parents in this country available to provide care and physical custody, he was designated as a UAC and placed into the custody of ORR as required by statute. *Id.* at ¶ 19. To that end, "[p]etitioner remains detained in ORR custody at the Heartland Int. Children's Residential Center in Chicago, Illinois." *Id.* at ¶ 8.

E.F.E.L.'s brother claims to have applied before for the petitioner, but his petition indicates that his application was denied because he lacked documentation required under the new ORR policy. Pet. ¶ 8. That said, ORR reached out to the brother on the same date that the petitioner came into their custody. Decl. Biswas ¶ 19. ORR indicates that the brother failed to complete a sponsor application and subsequently withdrew himself from sponsorship consideration on March 6, 2026. *Id.* ¶ 20. The petitioner is bringing six claims: (1) that respondents' requirement for domestic-identity documents violate the TVPRA. Pet. ¶¶ 47–56; (2) that respondents' new identification requirements cause unnecessary delay and violate the TVPRA's release criteria of "prompt" adjudication, *Id.* ¶¶ 57–63; (3) that respondent's documentation requirement violates petitioner's due process rights under the Fifth Amendment, *Id.* ¶¶ 64–69; (4) that petitioner's continued to detention is a violation of his Fifth Amendment rights, *Id.* ¶¶ 70–75; (5) that

petitioner's inability to reunify with his brother is a violation of his Fifth Amendment rights, *Id.* ¶¶ 76–83; and (6) that respondent's documentation requirements violate the Fifth Amendment Equal Protection Clause. *Id.* ¶¶ 84–88. This court ordered respondents to file their return by March 16, 2025. Dkt. 11.

Legal Standard

Section 2241 confers jurisdiction on this court to order the release of any person who is held in the custody of the United States in violation of the “laws . . . of the United States” or the United States Constitution. 28 U.S.C. § 2241(c). The burden rests on the person in custody to prove their detention is unlawful. *See, e.g., Walker v. Johnston*, 312 U.S. 275, 286 (1941).

Argument

I. Administrative Exhaustion Is Appropriate Here.

E.F.E.L.'s petition is untimely where, as here, his brother withdrew his sponsorship application and does not even have a pending sponsorship application with ORR. *See, e.g., Richmond v. Scibana*, 387 F.3d 602, 604 (7th Cir. 2004) (discussing the “common-law exhaustion rule [that] applies to § 2241 actions”); *Baker v. Warden*, No. 23 C 50028, 2025 WL 1398979, at *3 (N.D. Ill. May 14, 2025) (petitioners “must exhaust their federal administrative remedies before seeking habeas relief in court”). Still, when Congress has not imposed a statutory administrative exhaustion requirement, “sound judicial discretion governs” whether exhaustion should be required. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); *see also Gonzalez v. O'Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004). The exhaustion doctrine both allows agencies to apply their special expertise in interpreting relevant statutes and promotes judicial efficiency. *Id.* But in making such an assessment, courts must balance the individual and institutional interests involved, considering “the nature of the claim presented and the characteristics of the particular administrative procedure provided.” *McCarthy*, 503 U.S. at 146. The general rule is that parties

must exhaust “prescribed administrative remedies before seeking relief from the federal courts.” *Id.* at 144-45. This case falls well within this general rule because petitioner’s brother has failed to submit a sponsorship application and withdrawn application ORR and withdrawn his sponsorship of the petitioner. Biswas Decl. ¶ 20.

There are “two exceptions to the exhaustion requirement First, exhaustion will be excused when resort to such procedures would be futile, and second, the exhaustion requirement is excused when a claimant is wrongfully denied meaningful access to administrative procedures.” *Lieske v. Morlock*, 570 F. Supp. 1426, 1429 (N.D. Ill. 1983). Neither of these exceptions apply. It appears from the petition that E.F.E.L. was previously released by ORR in March 2025, so the sponsor has been successful in the recent past (although, as discussed above and below, further requirements are now contemplated by statute since OBBBA’s passage in July 2025). Pet. ¶ 18. Further, there is no allegation whatsoever that ORR is preventing petitioner’s brother from filling out or sending in a sponsorship application. Consequently, the court should require exhaustion so that petitioner’s brother can at least submit a sponsorship application to ORR. *See Woodford v. Ngo*, 548 U.S. 81, 90–91 (2006) (“Proper exhaustion demands compliance with an agency’s deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings.”).

As alluded to above, the statutory and regulatory framework contemplate a robust administrative process to allow ORR to vet sponsorship applicants. *See supra* pp. 5–7. Bypassing that process entirely via habeas relief (or through an ex post guardianship order from a State court) would directly undermine the review-process that the HHS Secretary “*shall, at a minimum, . . . verif[y] the custodian's identity and relationship to the child, if any, as well as [make] 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) (emphasis added). And regarding time, the sponsorship application process is supposed to be performed relatively expeditiously. *See* 45 C.F.R. § 410.1205(b) (stating that review of sponsor application should be completed within 14 calendar days of receipt absent unexpected delay); Biswas Decl. ¶ 5. There is thus little reason why exhaustion should not be required here.

II. ORR’s Custody of E.F.E.L. Is Required By Statute.

In addition, it is worth noting that this case is fundamentally different from a typical habeas petition because “juveniles, unlike adults, are always in some form of custody.” *Flores*, 507 U.S. at 302. Accordingly, “where the custody of the parent or legal guardian fails,” the Supreme Court has held that the “government may (indeed, we have said *must*) either exercise custody itself or appoint someone else to do so.” *Id.*; *see also Schall v. Martin*, 467 U.S. 253, 265 (1984) (noting that a “juvenile’s interest in freedom from institutional restraints . . . must be qualified by the recognition that juveniles, unlike adults, are always in some form of custody” because they “are not assumed to have the capacity to take care of themselves”).

In this case, the contrast is even more stark, as E.F.E.L. was admittedly brought into ORR custody in January 2025 *before* he had any parent or recognized legal guardian within the United States. This means that ORR originally took custody of E.F.E.L. when he was a UAC under the HSA. And in that circumstance, the TVPRA reinforces and expands upon the government’s responsibility for the care of UACs. Unlike adults in the custody of other agencies, ORR cannot simply release children in its care on their own recognizance, or to just anyone who is willing to sponsor them. 6 U.S.C. § 279(b)(2)(B). Rather, the TVPRA requires that ORR make a considered decision about each child’s placement based upon all the circumstances—which would include assessing sponsors who suddenly withdraw their sponsorship after failing to complete an

application. *See* Biswas Decl. ¶¶ 19–20.

As discussed above, the petition should fail because his brother has no pending application to ORR to take custody of E.F.E.L. so that ORR can make a considered decision of any kind. *Id.* at ¶ 20. Instead of going the direct route contemplated under the statute and regulations, E.F.E.L. has attempted to short-circuit that process by going to district court and filing this habeas petition to have the court make its own “best interests” determination. But considering the brother’s refusal to even attempt the revised sponsor-assessment process, ORR’s actions in this matter strictly follow the statutory requirements. As discussed above, ORR is *prohibited* from releasing E.F.E.L. to sponsor’s custody until it 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). Sponsor’s failure to even provide a sponsor application prevents ORR from ever making that determination. Accordingly, ORR is acting in accordance with the TVPRA’s requirements, and E.F.E.L. should not be released.

III. Nothing About ORR’s Continued Care for E.F.E.L. Violates the Fifth Amendment.

Petitioner also argues that ORR’s custody of him constitutes a due process violation because he and his legal guardian have a liberty interest under the Due Process Clause in remaining together as a family, asserting that his detention as a UAC violates substantive due process because it furthers no legitimate purpose, and the requirement that the sponsor’s documents be from the United States serve no legitimate purpose. Pet. ¶¶ 64–83. These arguments, however, are contrary to well-established precedent and ignore the significantly diminished interest that sponsor had in not having custody over E.F.E.L. at the time he was placed into ORR’s care on December 3, 2025.

Start with procedural due process. A procedural due process analysis typically considers the three factors articulated by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976). But under that analysis, the petitioner cannot demonstrate that the process that ORR provides for

E.F.E.L. is lacking because no one has even tried to complete that process. Biswas Decl. ¶ 20. Next turn to the procedural due process analysis allegation that separation occurred here because the brother did not submit the proper government issued documents. Pet. ¶ 87. In the only Supreme Court case dealing with UACs, the Court held that children such as E.F.E.L. (where the private placement sought is with neither a parent nor close relative) have neither a substantive nor a procedural due process claim regardless of a *Mathews* -balancing analysis. *See Flores*, 507 U.S. at 303–04, 308 (finding no right to an individualized hearing regarding whether a private placement would be in the child’s “best interest,” no substantive due process right to release, and that the procedural due process arguments were “just the ‘substantive due process’ arguments recast in ‘procedural due process’ terms.”). In other words, “[i]nstitutional custody (despite the availability of responsible private custodians) is not unconstitutional in itself.” *Flores*, 507 U.S. at 303–04. This is especially so where, as here, federal law *requires* that a child be placed in ORR’s custody and may not be released to anyone else’s custody unless and until ORR determines it may do so safely, and the integrity of the identity documents ensures that ORR only releases to the properly identified sponsors. 8 U.S.C. § 1232(c)(3).

Finally, and to the extent petitioner presses an amorphous interest in family unity, even parental rights (which are not even involved here) can still yield to a government’s interest in investigating situations that may give rise to neglect and abuse, as the law requires ORR to do. *See, e.g.*, 8 U.S.C. § 1232(c)(3)(A). Here, the sponsor has no parental rights based solely on sibling relationship. Here a family unity right runs against the caution that the liberty protected by the Due Process Clause should not be “subtly transformed into the policy preferences of . . . [the] Court.” *Reyna v. Hott*, No. 17-cv-1192, 2018 WL 3551558, at *4–5 (E.D. Va. Mar. 20, 2018). In this regard, “family unity” in the context of civil immigration detention “is an interest that . . . does

not exist.” *Reyna v. Hott*, 921 F.3d 204, 211 (4th Cir. 2019); *see also Aguilar v. ICE*, 510 F.3d 1, 21–23 (1st Cir. 2007) (similar); *M.O.G.R. v. Warden*, No. 25-cv-356, 2025 WL 3460936, at *5 (M.D. Ga. Dec. 2, 2025) (similar).

The same is true for petitioner’s equal-protection argument, which boils down to how many foreign nationals in this country already have U.S.-issued documentation, while recent arrivals might not. That argument fails to account for how the political branches regularly make rules for foreign nationals that would not be constitutional if applied to citizens, and that “a host of constitutional and statutory provisions rest on the premise that a legitimate distinction between citizens and aliens may justify attributes and benefits for one class not accorded to the other.” *Mathews v. Diaz*, 426 U.S. 67, 78 (1976). And far from having any rational basis for requiring more thorough documentation, the OBBBA requires as much, and the only other court to have looked at this issue has already stated that “ORR [has] compelling reasons to modify its [identification] policies” based on the I&A “Team’s report identif[ying] serious breaches of ORR’s statutory duty to protect children from trafficking and to identify fraud.” *Angelica S. v. U.S. Dep’t of Health & Human Servs.*, 786 F. Supp. 3d 158, 173 (D.D.C. 2025).

Conclusion

For the foregoing reasons, the court should deny the petition.

Respectfully submitted,

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