

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

E.F.E.L.,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 26 C 2507
	)	
KRISTI NOEM, Secretary of Homeland Security	)	
et. al.,	)	Judge Coleman
	)	
Respondents.	)	
	)	

RESPONDENT'S SUR-REPLY

E.F.E.L. argues that he is an *Angelica S.* class member, and as a class member, the original sponsorship packet filed in January 2025 should have been sufficient for the Office of Refugee Resettlement (“ORR”) to release him to his sponsor, and applying the new rules is impermissibly retroactive. *See* Dkt. 23, Petitioner’s Reply to Response (“Pet. Reply”) at 9 -12 (citing *Angelica S. v. U.S. Dep’t. of Health & Human Servs* (HHS), 786 F.Supp.3d 158 (D.D.C. 2025)). The petitioner also maintains that the ORR document policies violate TVPRA’s regulations and violate his Fifth Amendment Rights. *Id.* at 14-15. In this case, the original sponsorship application filed on behalf of E.F.E.L. was filed, adjudicated, and resulted in his release before the April 2025 cut-off date contemplated in the *Angelica S.* class action. Therefore, his time with ORR after his December 2025 referral – which was several months after his March release and the period contemplated by *Angelica S.* – necessitates a new sponsorship application. Further, as stated in respondents’ previous response, the new requirements and E.F.E.L.’s current referral to ORR comports with the TVPRA and Fifth Amendment jurisprudence. *See* Dkt. 16, Response at 14-16. Respondents re-assert and adopt the arguments made in that briefing to preserve those arguments

for appeal but newly address E.F.E.L.’s arguments involving alleged class action and retroactivity below.

Argument

1. Retroactivity Does not Apply because the December 2025 Referral Necessitated a Separate Sponsorship Application, Subjecting the Sponsor to the New Rules.

ORR treats all unaccompanied alien children who come into its custody the same, save for some limited exceptions. This is because ORR only takes children into its custody upon referral by another federal agency. *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). Indeed, it is the referring agency, *not ORR*, that makes the determination that the child is an unaccompanied alien child (“UAC”), referring the UAC to ORR custody. 8 U.S.C. § 1232(b)(3). In fact, ORR “*shall* accept referrals of unaccompanied children, from any department or agency of the Federal Government at any time, every day of the year.” 45 C.F.R. § 410.1101. Further, as part of the sponsor suitability assessment process, ORR “shall evaluate the unaccompanied child’s *current* function and strengths in conjunction with any [current] risks or concerns . . .” 45 C.F.R. § 410.1202(f) (emphasis added). *See also* 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. Such determination 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.”).

In this regard, ORR is also very different from state child welfare agencies, which typically retain such authority post-placement. Dkt. 16, Exhibit 1, Declaration of Tobias Biswas (“Biswas

Decl.”) ¶ 9. Accordingly, ORR generally must treat every referral the same as any other referral due to child safety considerations in its identity verification and sponsor-vetting policies. *Id.*

In each referral, 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. All this sponsor information can readily change, especially as here when there has been a seven-month lapse since the petitioner was in ORR custody the last time.

In the sponsorship application filed after December 2025, 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. Therefore, there is no current application for ORR to review.

2. Petitioner’s Most Recent Referral to ORR Custody Was After April 22, 2025, so Petitioner is Not an *Angelica S.* Class Member and The Document Requirements are Not Retroactive.

Petitioner is not an *Angelica S.* class member because his current referral to ORR custody happened well after the April 22, 2025, cut-off date for membership. *Angelica S. et. al. v. Dep’t of Health & Human Servs.*, is a class action lawsuit challenging the March 25, 2025 Interim Final Rule and a February 2025 ORR memorandum which imposed changes to the sponsor vetting process. 786 F.Supp.3d at 166-168. The relevant finding here is that the district court certified the following class of all unaccompanied children:

- 1) who were in or transferred to the custody of HHS on or *before* April 22, 2025;
- 2) who have identified a potential sponsor; and 3) whose sponsor's family reunification applicant has been denied, closed or withdrawn, delayed, or cannot be completed because the sponsor is missing documents newly required on or after March 7, 2025.

786 F.Supp.3d at 176 (emphasis added). The court limited the class to those children transferred to ORR custody on or before April 22, 2025 to ensure it encompassed individuals who were *in* ORR custody “around the time” or “slightly after” the new document changes became effective. *Id.* at 178. The reason for this was to make sure the class comprises children who “likely experienced retroactive application” of the new requirements. *Id.* Indeed, the court went on to explain that its decision regarding provisional class certification and the grant of preliminary injunction was “a narrow one,” and did “not obligate ORR to approve any particular sponsor or to release any individual child.” *Id.* at 179. Nor did the court’s order in *Angelica S.* “prevent ORR from imposing more rigorous sponsor documentation requirements and thoroughly vetting sponsors on a case-by-case basis. It merely prevents the agency from creating a new blanket policy that departs from its previous one without explaining how it weighed the disrupted reliance interests against other valid considerations.” *Id.*

Petitioner argues that the sponsorship application filed by his brother in January 2025 should grandfather any future applications because the original application was filed before April 22, 2025, the date indicated in *Angelica S., et. al.* See Pet. Reply at 9. However, petitioner acknowledges that his original application resulted in his release to his brother’s custody on March 2, 2025. Pet. Reply at 2. He was therefore not in ORR custody “around the time” the new requirements took affect and therefore his original January 2025 application was not affected. In fact, the policies at issue in *Angelica S.* were published *after* Petitioner’s release, on March 7, 2025 and April 15, 2025. *Angelica S.*, 786 F.Supp.3d at 167, 168. As explained above, ORR treats every

referral as a new referral, especially a referral that occurred several months after the child was originally released. *Angelica S.* simply does not contemplate the petitioner's situation. Therefore, the *Angelica S.* class membership does not apply and the new sponsorship application that was filed months after the new rules took effect does not subject the new application to retroactivity concerns.

3. ORR Policy Comports with the Federal Law.

The Homeland Security Act of 2002 transferred to the Director of ORR functions under the immigration laws of the United States with respect to the care of UAC that were vested in or performed by the Commissioner of the former Immigration and Naturalization Service. 6 U.S.C. § 279(a). ORR's responsibilities include, among other things, coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status; ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child; making and implementing placement determinations; implementing policies with respect to the care and placement of unaccompanied alien children. *See generally id.* at § 279(b)(1). 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. *Id.* at § 279(b)(2)(B).

Congress enacted the Trafficking Victim's Protection Act ("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 directly by ORR, as well as 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.

If anything, the TVPRA reinforces and expands upon the government's responsibility for the care of UACs. 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.

4. 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. Reply at 14. 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.

There is no violation of due process in this case. 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).¹

Finally, and to the extent petitioner presses an 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).

¹ Notably, ORR’s regulations provide for appeal rights for “close relatives” seeking to sponsor UAC, such as E.F.E.L.’s brother in this case. *See* 45 C.F.R. 410.1206. So, even if ORR were to deny release to E.F.E.L.’s brother, the brother would have due process rights under ORR’s regulations to appeal such denial.

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.*, 786 F. Supp. 3d at 173.

Conclusion

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

Respectfully submitted,

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