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11
12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14

15 J.V.C.D., a minor, et al.,

16 Petitioners,

17 v.

18 ANA BABUDAR, et al.,

19 Respondents.
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No. 5:26-cv-01820-SP

**RESPONDENTS' ANSWER TO
PETITION FOR WRIT OF HABEAS
CORPUS**

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

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1 **I. INTRODUCTION**

2 On April 13, 2026, minor petitioners J.V.C.D. and A.M.C.D. (the “Minor
3 Petitioners”) and A.S.C.D. as next friend (collectively, the “Petitioners”) filed a petition
4 for writ of habeas corpus (the “Petition”) [Dkt. no. 2] through counsel. The Minor
5 Petitioners are Unaccompanied Alien Children (UACs) who, having arrived in the
6 United States without accompanying guardians and without apparent lawful status, were
7 transferred to the supervision of the Office of Refugee Resettlement (ORR), which in
8 turn arranges for their care at ORR-subcontracted facilities. The Minor Petitioners have
9 filed petitions for the appointment of A.S.C.D. as their guardian ad litem in this matter
10 [Dkt. nos. 5 and 6].

11 By order dated April 14, 2026 [Dkt. no. 9], the Court ordered an answer to the
12 Petition within seven days, i.e. by April 21, 2026. The Respondents hereby respond.

13 The Petition complains solely about an alleged unwarranted delay by ORR in
14 processing A.S.C.D.’s application for sponsorship of the Minor Petitioners. As a half-
15 sibling who has not previously served as a primary caregiver of the Minor Petitioners,
16 A.S.C.D. is classified as a Category 2B applicant by ORR policy. *See* Petition,
17 Declaration of Next Friend, A.S.C.D., in Support of Petition for Writ of Habeas Corpus,
18 ¶¶ 2-4, & Ex. 1, p. 2. A.S.C.D. was identified by ORR itself as a potential sponsor of the
19 Minor Petitioners within days after the Minor Petitioners were transferred into ORR
20 custody, and it was ORR that encouraged A.S.C.D. to apply for sponsorship. Declaration
21 of Toby Biswas, ¶¶ 29-31.

22 The Petition’s complaints about delay in processing the application do not
23 establish that the current state of custody is unlawful. Habeas jurisdiction is not a means
24 for complaining about terms of custody. *See Pinson v. Carvajal*, 69 F.4th 1059, 1077
25 (9th Cir. 2023) (“Because [petitioner’s] claims lie outside the historic core of habeas
26 corpus, we conclude the district court properly found it lacked jurisdiction to hear [his]
27 petition.”), *cert. denied sub nom. Sands v. Bradley*, 144 S. Ct. 1382 (2024); *id.* at 1070
28 (explaining that “release from confinement is the only available remedy for claims at the

1 writ's core").

2 Indeed, a delayed agency adjudication case is normally brought via a mandamus
3 or APA unreasonable delay claim, rather than in the guise of a habeas action. Here, the
4 Respondents are allowed (and indeed are required) to request various types of
5 information about prospective sponsors and to assess and decide their applications. *See*
6 Biswas Decl., ¶¶ 11-27. Understanding that nobody likes delays, they do not establish
7 unlawful custody. Here, with respect to the demand for immediate release of the
8 unaccompanied children, which has been incorrectly presented in a habeas context, the
9 Petitioners have not shown that the UACs are currently being held in unlawful custody.

10 Accordingly, the Respondents submit that the Petition fails to carry the
11 Petitioners' heavy burden to establish that the Minor Petitioners' current custody by
12 ORR is unlawful, such that compelling immediate release is the only available remedy.
13 Petitioners should be required to exhaust the agency process first. Presumably that will
14 soon moot their claims entirely, but in any event it will create a proper record.

15 **II. LEGAL FRAMEWORK**

16 **A. The Homeland Security Act of 2002 (HSA)**

17 With the enactment of the HSA, Congress created DHS and transferred most
18 immigration functions formerly performed by INS to DHS and its components, including
19 U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, and
20 U.S. Immigration and Customs Enforcement ("ICE"). *See* HSA; Department of
21 Homeland Security Reorganization Plan Modification of January 30, 2003, H.R. Doc.
22 No. 108-32 (2003) (also set forth as a note to 6 U.S.C. § 542). Notably, Congress
23 transferred to [ORR] the responsibility for the care of any UAC "who [is] in Federal
24 custody by reason of [his or her] immigration status." 6 U.S.C. §§ 279(a), (b)(1)(A). The
25 HSA also transferred to ORR the responsibility for making all placement decisions for
26 UACs, required ORR to coordinate these placement decisions with DHS, and required
27 ORR to ensure that UACs are not released upon their own recognizance. *See* 6 U.S.C. §§
28 279(b)(1)(C), (D), (b)(2).

1 **B. The Trafficking Victims Protection Reauthorization Act of 2008**
2 **(TVPRA)**

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

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

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

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

26 The Foundational Rule provides that ORR identifies a standard program placement
27 for the UAC upon notification from any federal department or agency that a child in its
28 custody is an UAC and therefore must be transferred to ORR custody. 45 C.F.R. §

1 410.1101(b). ORR works with the referring federal government department or agency to
2 accept transfer of custody of the UAC, consistent with the statutory requirements at 8
3 U.S.C. § 1232(b)(3) and 45 C.F.R. § 410.1101(c). ORR places each UAC in the least
4 restrictive setting that is in the best interest of the child and appropriate to the
5 unaccompanied child's age and individualized needs. 45 C.F.R. § 410.1103(a). ORR may
6 place a child in a shelter facility, foster home or group home (which may be therapeutic),
7 heightened supervision facility or secure facility (including residential treatment centers),
8 or other care facility that can provide for their specific individualized needs, including an
9 out-of-network ("OON") placement (which may be restrictive or non-restrictive). 45
10 C.F.R. § 410.1102; UAC Policy Guide § 1.2. ORR also considers several factors that are
11 relevant to the UAC's placement, including but not limited to: danger to self; danger to
12 the community/others; runaway risk; trafficking in person or other safety concerns; age;
13 and gender. 45 C.F.R. § 410.1103(b).

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

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

25 To carry out its statutory mandate under the HSA and TVPRA, ORR has developed
26 policies and procedures for identifying, and conducting suitability assessments of,
27 potential sponsors. These procedures are generally set out in the ORR's publicly available
28 UAC Bureau Policy Guide (UAC Policy Guide). *See* ORR Unaccompanied Alien

1 Children Bureau Policy Guide, *available at* [https://acf.gov/orr/policy-](https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide)
2 [guidance/unaccompanied-children-bureau-policy-guide](https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide). A full assessment of a potential
3 sponsor's suitability is particularly appropriate because ORR is not a law or immigration
4 enforcement agency and lacks the authority to hold individuals accountable by
5 reassuming care if the sponsor abuses or neglects a child after a UAC has been released
6 from ORR custody. Rather, ORR only takes children into its custody upon referral by
7 another federal agency, as described in statute. In this regard, ORR is also very different
8 from state child welfare agencies, which typically retain such authority post-placement.
9 Accordingly, ORR must front-load child safety considerations in its identity verification
10 and sponsor-vetting policies.

11 In light of ORR's obligation to protect UAC from smugglers, traffickers, and
12 others who may seek to victimize them, "safe and timely release . . . involves several
13 steps, including: the identification of sponsors; sponsor application; interviews; the
14 assessment (evaluation) of sponsor suitability, including verification of the sponsor's
15 identity and relationship to the child (if any), background checks, and in some cases
16 home studies; and post-release planning." UAC Policy Guide § 2.1. There are four
17 categories of potential sponsors: (1) Category 1, consisting of parents or legal guardians;
18 (2) Category 2A, consisting of siblings, half-siblings, grandparents, immediate relatives
19 (such as aunts, uncles, and cousins) who previously served as a primary caregiver, and
20 other biological relatives and relatives through marriage; (3) Category 2B, consisting of
21 immediate relatives (including biological relatives and relatives through marriage) who
22 did not previously serve as a primary caregiver; (4) Category 3, consisting of other
23 sponsors, such as distant relatives and unrelated adult individuals. UAC Policy Guide §
24 2.2.1. ORR (through its care providers) conducts a suitability assessment of the potential
25 sponsor, including a review of the sponsor's strengths, resources, risk factors, and
26 special concerns within the context of each child's needs, strengths, resources, risk
27 factors, and relationship to the sponsor. UAC Policy Guide §§ 2.2.2, 2.4.

28 A potential sponsor must complete a Family Reunification Application ("FRA"),

1 provide unexpired government-issued identification documentation for the sponsor and
2 any other adults living in the household or identified in a sponsor care plan, and, along
3 with any adult living in his or her household, undergo a background check. UAC Policy
4 Guide §§ 2.2.4, 2.5.

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

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

23 **III. FACTS**

24 J.V.C.D. and A.M.C.D., unaccompanied alien children and citizens of Mexico,
25 were encountered by U.S. Customs and Border Protection ("CBP") agents on September
26 10, 2025. Biswas Decl., ¶ 28. CBP determined that the Minor Petitioners were UAC, and
27 they were transferred into ORR custody pursuant to 8 U.S.C. § 1232(b) on September
28 11, 2025. Biswas Decl., ¶ 29. ORR performed an initial intake assessment on September

1 12, 2025. The Minor Petitioners were placed with Building Bridges Foster Family
2 Agency in San Bernadino, California. Biswas Decl., ¶ 30.

3 On or around September 16, 2025, ORR identified A.S.C.D. as a potential sponsor
4 (“Sponsor”), and after explaining the application process, sent her the sponsorship
5 application. Biswas Decl., ¶ 31. On September 29, 2025, ORR received proof of the
6 Sponsor’s identity. Biswas Decl., ¶ 32. On October 2, 2025, ORR received an
7 Authorization for Release of Information (“ARI”) from the Sponsor. Biswas Decl., ¶ 33.

8 On October 3, 2025, ORR requested internet background checks for the Sponsor,
9 which include Public Records checks and Sex Offender Registry checks, conducted
10 through the U.S. Department of Justice National Sex Offender Public Website. Biswas
11 Decl., ¶ 34. The Sponsor attended two fingerprint-based background check
12 appointments. The results for the first came back on or around October 4 as
13 unclassifiable. Biswas Decl., ¶ 35. On October 9, 2026, ORR received the results of the
14 internet background checks, which returned as clear. Biswas Decl., ¶ 36. The Sponsor
15 attended a second fingerprint-based background check appointment on October 17,
16 2025. The results once again returned as unclassifiable on October 18, 2025. Biswas
17 Decl., ¶ 37. On November 5, 2005, ORR received proof of the Sponsor’s address.
18 Biswas Decl., ¶ 38.

19 On November 10, 2025, ORR verified the Sponsor’s relationship via a birth
20 certificate trail. Biswas Decl., ¶ 39. On November 17, 2025, ORR received the
21 completed sponsor application and the ARI for the alternate caregiver (“ACG”). Biswas
22 Decl., ¶ 40. On November 17, 2025, ORR requested the ACG’s fingerprints. ORR also
23 requested internet background checks for the ACG on this date. Biswas Decl., ¶ 41. On
24 November 18, 2025, ORR received and cleared ACG’s fingerprints and internet
25 background checks. Biswas Decl., ¶ 42.

26 On December 18, 2025, ORR referred A.M.C.D.’s case for a TVPRA-mandated
27 home study. This included a home visit which occurred on or around December 22,
28 2025. Biswas Decl., ¶ 43. On January 5, 2026, ORR received a home study report with a

1 positive recommendation for A.M.C.D. Biswas Decl., ¶ 44. On January 8, 2026, ORR
2 requested updated internet background checks for the Sponsor. The results were received
3 on January 12. Biswas Decl., ¶ 45. On January 15, 2026, ORR requested updated
4 internet background checks for the ACG. The results were received on January 20, 2026.
5 Biswas Decl., ¶ 46. On January 30, 2026, ORR requested a discretionary home study for
6 J.V.C.D. The home visit occurred on or around February 6, 2026. Biswas Decl., ¶ 47. On
7 February 9, 2026, ORR received a report on the completed home study for J.V.C.D. with
8 a positive recommendation. Biswas Decl., ¶ 48.

9 On March 27, 2026, ORR requested to collect DNA swabs from the children.
10 Biswas Decl., ¶ 49. On that same date, ORR scheduled the in-person identity verification
11 and DNA appointment for the Sponsor for March 30, 2026. Biswas Decl., ¶ 50. On
12 March 30, 2026, this appointment was rescheduled to April 1, 2026. Biswas Decl., ¶ 51.
13 On March 30, 2026, ORR received the Sponsor Vetting Packet with a caveat from the
14 Division of Vetting. Biswas Decl., ¶ 52. On April 1, 2026, ORR completed the
15 Sponsor's in-person ID check and DNA collection. Biswas Decl., ¶ 53.

16 On April 3, 2026, ORR received DNA results confirming half-sibling relationship
17 with the Sponsor for A.M.C.D., and an inconclusive result for J.V.C.D. Biswas Decl., ¶
18 54. On April 7, 2026, ORR requested DNA children's comparison to establish their
19 biological relationship. Biswas Decl., ¶ 55. On April 14, 2026, ORR received the results
20 of DNA comparison establishing the children's biological relationship. ORR requested
21 new swabs to try again to establish the biological relationship between the Sponsor and
22 J.V.C.D. Biswas Decl., ¶ 56.

23 Once the results of the DNA testing are received, ORR will promptly make a final
24 sponsor suitability determination and release decision based on review of the entire
25 application. Biswas Decl., ¶ 57. Releasing A.M.C.D. prior to adjudication of the
26 Sponsor's application for J.V.C.D would be detrimental to their mental wellbeing, as
27 ORR has observed that the children appear to be each other's primary source of
28 emotional support. Biswas Decl., ¶ 58.

1 **IV. ARGUMENT**

2 **A. Prudential Administrative Exhaustion Should Be Required of the**
3 **Petitioners**

4 Petitioners argue that their habeas claims are not subject to *mandatory*
5 administrative exhaustion, but rather to *prudential* administrative exhaustion, and on that
6 basis essentially attempt to skip past this issue, after acknowledging that they are subject
7 to it. *See* Petition, pp. 21-22. Their Petition should be denied for this threshold reason.

8 Although exhaustion of administrative remedies is not a jurisdictional prerequisite
9 for habeas petitions, courts generally “require, as a prudential matter, that habeas
10 petitioners exhaust available judicial and administrative remedies before seeking [such]
11 relief.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001) (abrogated on other
12 grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006)). The exhaustion
13 requirement is subject to waiver because it is not a “‘jurisdictional’ prerequisite.” *Id.*

14 Courts may require prudential exhaustion where: “(1) agency expertise makes
15 agency consideration necessary to generate a proper record and reach a proper decision;
16 (2) relaxation of the requirement would encourage the deliberate bypass of the
17 administrative scheme; and (3) administrative review is likely to allow the agency to
18 correct its own mistakes and to preclude the need for judicial review.” *Puga v. Chertoff*,
19 488 F.3d 812, 815 (9th Cir. 2007).

20 This is particularly important where, as here, the claims of agency delay relate to
21 relatively complicated procedural and factual history, as set forth in the Biswa
22 Declaration. The details of the timing at issue matter. Establishing a putatively indefinite
23 delay requires much more than complaining that the process is taking too long. Habeas
24 jurisdiction is not a way to surmount unwanted delays in agency adjudicative process.

25 This case meets the elements for prudential exhaustion. ORR has special expertise
26 in resolving FRAs pursuant to the complex procedural and legal requirements described
27 above. Also, allowing a “relaxation of the exhaustion requirement” would promote the
28 avoidance of complying with the FRA process, as well as encourage hiding or falsifying

1 information in that process. Finally, the normal outcome of the FRA process is likely to
2 resolve and moot the relief sought.

3 Accordingly, the Petitioners should not be permitted to circumvent the
4 administrative process.

5 **B. The Petitioners Have Not Established Unlawful Detention by the**
6 **Respondents**

7 Petitioners cite Due Process concerns and argue that this confers habeas
8 jurisdiction, but their delay claims are very different than *Zadvydas* habeas claims. *See*
9 *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Minor Petitioners are not being confined in
10 immigration detention. They are settled at contracted facilities. The complaint is that
11 their half-sister has not been immediately or rapidly granted custody.

12 Nor do Petitioners establish the type of indefinite custodial delay that the Supreme
13 Court found to have raised significant Due Process issues in *Zadvydas*. There, the
14 Supreme Court held that the burden shifts to the government, after six-months of
15 presumptively reasonable detention pursuant to a final removal order, to produce
16 evidence to show that removal is reasonably likely:

17 After this 6-month period, once the alien provides good reason to
18 believe that there is no significant likelihood of removal in the
19 reasonably foreseeable future, the Government must respond with
20 evidence sufficient to rebut that showing. And for detention to remain
21 reasonable, as the period of prior postremoval confinement grows,
22 what counts as the “reasonably foreseeable future” conversely would
23 have to shrink. This 6-month presumption, of course, does not mean
24 that every alien not removed must be released after six months. To the
25 contrary, an alien may be held in confinement until it has been
26 determined that there is no significant likelihood of removal in the
27 reasonably foreseeable future.

28 *Zadvydas*, 533 U.S. at 701.

Here, the Petitioners are not being held in confinement of the type at issue in
Zadvydas. And the record is replete with the Respondents’ continuing active processing
of the sponsorship application. *See Biswas Decl.*, ¶¶ 28-58.

1 Understanding that all sponsorship applicants would always prefer for their FRA
2 processing to be faster, there are good reasons why processing may take more time in
3 certain cases. For example, as the Biswas Declaration explains in detail, A.S.C.D.'s
4 fingerprints were twice returned as unclassifiable (Biswas Decl., ¶¶ 35-37), and her
5 original DNA results were inconclusive to establish her biological relationship with
6 J.V.C.D. (Biswas Decl., ¶¶ 54-57). She is being retested on April 19.¹ ORR has
7 represented that once the results of this DNA testing are received, ORR will promptly
8 make a final sponsor suitability determination and release decision based on its review of
9 the entire application. Biswas Decl., ¶ 57.

10 These details and the facts are important. ORR cannot abandon its processes
11 because complications arise, or because the factual circumstances and evidence evolve.
12 Complaining about delays in such complex and fact-intensive proceedings does not
13 come close to establishing *unlawfulness*.

14 Furthermore, while the sponsor applicant now seeks release of the children into
15 her care, she did not accompany the children when they were entering the United States.
16 The actual circumstances as to how and why these children came to enter the United
17 States are unclear on the present record. But it was not the United States government
18 who separated these children from their original caregivers. ORR has an important role
19 in the processing of FRAs, and that role cannot simply be set aside.

20 In sum, the Petition fails to establish that the Respondents are acting *unlawfully* by
21 taking time to resolve the FRA while the Minor Petitioners remain in ORR custody at
22 their contracted facility. Rather, the applicant for sponsorship is unhappy with the length
23 of time that the FRA processing has been taking. While understandable, that concern
24 does not suffice to prove the kind of *immediate affirmative unlawfulness* that is required
25 to prevail on a habeas petition.

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28 ¹ This date was provided in an email from Petitioners' counsel.

1 **V. CONCLUSION**

2 The Petition should be denied.

3 Dated: April 20, 2026

Respectfully submitted,

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