



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

June 8, 2026

By ECF

The Honorable Jesse M. Furman
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *S.R.U. v. Robert F. Kennedy, Jr., et al.*, No. 26 Civ. 4610 (JMF)

Dear Judge Furman:

This Office represents Respondents (the “Government”) in the above-referenced habeas corpus action seeking the release of an Unaccompanied Alien Child (“UAC”). We write respectfully, pursuant to the Court’s June 4, 2026, Order, ECF No. 6, to respond to the habeas petition. We also incorporate by reference the Declaration of Toby Biswas (“Biswas Decl.”), which provides additional legal and factual background.

Legal Background

The Homeland Security Act of 2002 assigns the Office of Refugee Resettlement (“ORR”)¹ broad authority over the care and custody of UACs² 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 protecting them from smugglers, traffickers, and others who might seek to victimize and exploit UACs. 6 U.S.C. §§ 279(b)(1)(A), (b)(2)(A)(ii). ORR’s goal is to release UACs to suitable sponsors where consistent with its statutory mandate to ensure that placement does not result in danger to UACs, to the community, or risk of flight by any UAC. *See* Biswas Decl. ¶ 9; *see also* 6 U.S.C. §§ 279(b)(1), (b)(2)(A)(ii); 8 U.S.C. §§ 1232(c)(1), (c)(3)(A).

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

¹ ORR is an entity within the Administration for Children and Families, which is itself within the U.S. Department of Health and Human Services (“HHS”).

² The Homeland Security Act 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).

regulations, which implement the settlement agreement in *Flores v. Reno*, No. 85 Civ. 4544 (C.D. Cal. Jan. 17, 1997) (the “*Flores Settlement Agreement*” or “FSA”),³ ORR assesses all potential sponsors (even when the potential sponsor is a child’s parent) before making any release determination, including a review of the potential sponsor’s strengths, resources, risk factors, and relationship to the UAC. Biswas Decl. ¶ 12; *see also, e.g.*, 45 C.F.R. §§ 410.1201(a), 1202(b) & (c), 1205.

The process for release of a UAC from ORR custody involves several steps, including: the identification of sponsors; a sponsor application; interviews; the assessment 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. Biswas Decl. ¶¶ 15–18; *see also* 45 C.F.R. part 410, subpart C. Once the assessment of the potential sponsor is complete, ORR makes a release determination. Biswas Decl. ¶ 19; Unaccompanied Alien Children Bureau (“UACB”) Policy Guide § 2.7. The determination 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. ¶ 19. ORR makes the final release decision. *Id.*; UACB Policy Guide § 2.7.⁴

Factual Background

Petitioner S.R.U. is a UAC and citizen of Guatemala, who was encountered by a Border Patrol Agent in Texas on December 17, 2025, and transferred to ORR custody pursuant to 8 U.S.C. § 1232(b) on December 20, 2025. Biswas Decl. ¶ 25. On December 22, 2025, ORR identified S.R.U.’s sister as a potential sponsor and contacted her to begin the assessment process (his sister indicated that S.R.U.’s father did not wish to serve as his son’s sponsor at that time). *Id.* ¶ 26.

As outlined in the Biswas Declaration, from December 2025, through present, ORR has taken multiple steps to completing the assessment process for S.R.U.’s sister, including in February 2026 completing a home study with positive results. *Id.* ¶¶ 26–39. The only item outstanding is submission of S.R.U.’s father’s Individual Taxpayer Identification Number (“ITIN”)—because he is a household member—and ORR anticipates being able to make a release decision within four days of receiving the father’s ITIN. *Id.* ¶ 43. Because S.R.U.’s sister is a “Category 2” sponsor (i.e., an immediate relative) as opposed to a “Category 1” sponsor (i.e., a parent or legal guardian),

³ The *Flores Settlement Agreement* is a consent decree entered into by the former Immigration and Naturalization Service (“INS”) governing the apprehension, process, and care and custody of alien minors in its custody. The Department of Homeland Security and HHS are successor agencies to the former INS with respect to various parts of the FSA. However, the FSA has been mostly terminated as to HHS. *See Flores v. Garland*, No. 85 Civ. 4544, 2024 WL 3467715, at *9 (C.D. Cal. June 28, 2024) (conditionally and partially terminating the FSA as to HHS on the basis of ORR’s publication of regulations implementing the FSA). The few remaining paragraphs of the FSA that still apply to HHS do not pertain to the ORR release processes (e.g., the sponsor vetting processes). The original FSA is available at <https://acf.gov/sites/default/files/documents/orr/Flores-Settlement-Agreement.pdf>.

⁴ The UACB Policy Guide is available at <https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide>.

id. ¶ 15, ORR cannot waive the requirement for the father's ITIN, *id.* ¶ 44; *see also* UACB Policy Guide § 2.2.4 (“ORR requires all potential sponsors, household members (HHMs) age 18 or older, and alternate caregivers (ACGs) age 18 and older identified in the sponsor care plan or associated with a *Sponsor Application* to provide proof of SSN or ITIN. Sponsors, HHMs, and ACGs who cannot provide proof of their SSN or ITIN may request a new copy of their SSN card or apply for and later provide their ITIN, as appropriate, to complete the *Sponsor Application* and vetting process.” (emphasis added)).⁵ If, however, S.R.U.'s father becomes S.R.U.'s sponsor, the father, as a “Category 1” sponsor, could request that ORR waive the requirement that he provide his ITIN. Biswas Decl. ¶ 44.

Legal Argument

Although the Government anticipates that the assessment process will be completed soon (as soon as it receives the father's ITIN), the Government briefly responds to S.R.U.'s arguments on the merits.

First, S.R.U.'s procedural and substantive due process claims, Pet. ¶¶ 42–55, 56–60, fail. With respect to procedural due process, under the balancing test pursuant to *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), ORR's procedures do not create a risk of erroneous deprivation because they are designed to release S.R.U. to his sponsor as soon as ORR can be assured that such release is safe and in the best interests of S.R.U. By requesting immediate release, S.R.U. seeks to short-circuit ORR's process for assessing issues of safety and the child's best interest. ORR is actively reviewing the sponsor's application and is nearing the final step in the process. The Government has a strong interest in protecting the welfare of UACs, as clearly expressed through the provisions of the TVPRA. *See Santosky v. Kramer*, 455 U.S. 745, 766 (1982) (“[T]he State has an urgent interest in the welfare of the child”) (citation and quotation marks omitted). ORR's procedures under the TVPRA are established to ensure that before any UAC is released from Government custody, the custodian and members of the household to whom the UAC is released are evaluated and determined to be safe and suitable for the UAC. Thus, these procedures serve an important governmental interest that cannot be set aside without creating a risk to the safety of UACs. For the above reasons, ORR's procedures seeking to release S.R.U. to a safe and suitable custodian comport with, rather than violate, due process.

With respect to substantive due process, it is difficult to overstate the extremely narrow nature of substantive due process analysis under Supreme Court jurisprudence, or the significant burden that S.R.U. must carry to demonstrate that ORR's policies run afoul of the same. As the Supreme Court has repeatedly explained, substantive due process only “prevents the government from engaging in conduct that shocks the conscience . . . or interferes with rights implicit in the concept of ordered liberty.” *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 847 (1998) (quoting *United States v. Salerno*, 481 U.S. 739, 746 (1987)). In cases challenging executive action, the threshold question is whether the challenged conduct was “so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.” *Id.* at 847 n.8. The facts here do not even approach

⁵ S.R.U. argues that his father must only provide ORR with proof that he applied for an ITIN—as opposed to the ITIN itself. Pet., ECF No. 1, ¶¶ 18, 19, 72. That argument ignores the plain language of the Policy Guide, which requires the provision of an ITIN “to complete” the application process. UACB Policy Guide § 2.2.4.

this standard; indeed, ORR is engaged in a release process that is meant to protect S.R.U.’s well-being, not harm it.

Further, S.R.U.’s Administrative Procedure Act (“APA”) and statutory claims, Pet. ¶¶ 61–65, 66–69, also fail. The APA permits judicial review of agency action only when, *inter alia*, “there is no other adequate remedy in a court.” 5 U.S.C. § 704. Where an alien’s claims for relief “necessarily imply the invalidity of their confinement,” those claims “must be brought in habeas” and not as APA claims. *See Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (internal quotation marks omitted). S.R.U.’s statutory claim is unavailing, as the requirement that ORR “promptly place” UACs, Pet. ¶ 62, must be read in conjunction with its responsibility to conduct a suitability assessment to ensure their best interests, including verification of the sponsor’s identity, a process which is nearing completion here.⁶

Finally, S.R.U. argues that his continued detention in ORR custody violates the *Flores* Settlement Agreement, because that agreement requires that a minor be released “without unnecessary delay” to a parent, legal guardian, or other qualified sponsor. Pet. ¶ 78. This argument is unavailing. First, the FSA has been mostly terminated as to HHS. *See Flores v. Garland*, 2024 WL 3467715, at *9 (conditionally and partially terminating the FSA as to HHS on the basis of ORR’s publication and regulations implementing the FSA). Second, S.R.U. has failed to show that the Government has violated any provision of the FSA. The FSA provides that “where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor’s safety or that of others, the INS shall release a minor from its custody without unnecessary delay . . . to . . . a parent.” *Flores v. Lynch*, 828 F.3d 898, 903 (9th Cir. 2016). However, the FSA also provides that:

A positive suitability assessment may be required to release to any individual or program pursuant to Paragraph 14. A suitability assessment may include such components as an investigation of the living conditions in which the minor would be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. Any such assessment should also take into consideration the wishes and concerns of the minor.

FSA ¶ 17. Thus, the requirement that ORR must release S.R.U. “without delay” must be read with reference to ORR’s responsibility for conducting a suitability assessment. Part of that suitability assessment includes verifying the identity of the sponsor and household member, which ORR is currently in the process of doing. Any delay in releasing S.R.U. from ORR custody is not “undue,” as it has been the result of ORR’s ongoing suitability assessment, and, at this time, the delay in S.R.U.’s father’s submission of his ITIN as part of that suitability assessment.

* * *

⁶ Similarly, S.R.U.’s *Accardi* claim, Pet. ¶¶ 70–76, fails, as the Government has complied with its regulations to ensure prompt but safe releases of UACs.

For all of these reasons, the Court should deny the petition for a writ of habeas corpus. I thank the Court for its consideration of this submission.

Respectfully submitted,

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