

1 TIMOTHY COURCHAINED
2 United States Attorney
3 District of Arizona
4 ALEX BEEMAN
5 Assistant United States Attorney
6 Indiana State Bar No. 31222-49
405 W. Congress Street, Suite 4800
Tucson, Arizona 85701
Telephone: (520) 620-7300
alex.beeman@usdoj.gov
Attorneys for Respondent

7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF ARIZONA

9 Susan Kettlewell o/b/o 108 minor children,
10 and,

11 The Florence Immigrant and Refugee
12 Rights Project,

13 Plaintiffs,

14 v.

15 Markwayne Mullin, Secretary of the
16 Department of Homeland Security, in his
17 official capacity; David Venturella, Acting
18 Director of U.S. Immigration and Customs
19 Enforcement, in his official capacity; Robert
20 F. Kennedy Jr., Secretary of the Department
21 of Health and Human Services, in his
22 official capacity; Angie Salazar, Acting
23 Director of the Office of Refugee
24 Resettlement, in her official capacity; Alex
25 J. Adams, Acting Assistant Secretary for the
Administration for Children and Families, in
his official capacity, the Department of
Health and Human Services; and, the Office
of Refugee Resettlement,

26 Defendants.

CV-26-00340-RM

**RETURN AND ANSWER
TO AMENDED PETITION FOR A
WRIT OF HABEAS CORPUS
UNDER 28 U.S.C. § 2241**

26 The Department of Health and Human Services, sued as Robert F. Kennedy Jr.,
27 Secretary of the Department of Health and Human Services, Angie Salazar, Acting
28 Director of the Office of Refugee Resettlement and Alex J. Adams, Acting Assistant

1 Secretary for the Administration for Children and Families (“Respondent or HHS”),
 2 improperly sued as Markwayne Mullin, Secretary of the Department of Homeland
 3 Security, and David Venturella, Acting Director of U.S. Immigration and Customs
 4 Enforcement, and the Office of Refugee Settlement returns and answers Susan Kettlewell’s
 5 (“Petitioner”) *First Amended Verified Petition for Writ of Habeas Corpus Pursuant to 28*
 6 *U.S.C. § 2241 and Complaint for Declaratory and Injunctive Relief (“Amended*
 7 *Petition”)*.¹

8 MEMORANDUM OF POINTS AND AUTHORITIES

9 I. INTRODUCTION

10 The Amended Petition alleges that 108 unaccompanied alien children (“UACs”) are
 11 at threat to be transferred to Texas or Louisiana as an antecedent step in the government’s
 12 purported accelerated effort to remove UACs. The Amended Petition further alleges that
 13 if the UACs are transferred, their access to their chosen and trusted legal counsel would be
 14 unconstitutionally inhibited. *See* Dkt. 14 at 16-26, ¶¶ 30-46. But Petitioner submitted no
 15 competent evidence that any of the 108 UACs have been identified for transfer, or that
 16 Respondent has taken any action towards transfer with respect to them other than L.M.D.A.
 17 who was placed in a heightened supervision facility after he absconded from ORR custody
 18 at Child Crisis Arizona and was subsequently apprehended by local law enforcement. *See*
 19 Dkt. 14 at 26, ¶ 45; Ex. A, p. 5, ¶¶ 13-16. Instead, Petitioner relies on speculation regarding
 20 a removal that was to occur on June 30 (which clearly did not occur) (Dkt. 14 at 18-19, ¶
 21 34) and reports from different news outlets about a purported plan to transfer UACs. *See*
 22 Dkt. 14 at 14, ¶¶ 34-35; Dkt. 14 at 25, ¶ 43.

23
 24 ¹ “The only proper respondent in a federal habeas corpus petition is the petitioner’s
 25 ‘immediate custodian.’” *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992)
 26 (quoting *Demjanjuk v. Meese*, 784 F.2d 1114, 1115 (D.C. Cir. 1986)). The care and
 27 custody of all unaccompanied alien children is the responsibility of Department of Health
 28 and Human Services (“HHS”). *See* 8 U.S.C. § 1232(b)(1). Aside from L.M.D.A (see
 below), all the UACs subject of this Amended Petition are “in federal custody of the Office
 of Refugee Resettlement (“ORR”) in the state of Arizona.” Dkt. 14 at 6-7, ¶11. The
 Administration for Children and Families is the component of HHS that includes ORR.

1 Regulations governing the transfer of UACs provide numerous procedural
2 protections. Importantly, with few exceptions, 45 C.F.R. § 410.1601(a)(3) requires notice
3 to “all appropriate interested parties of the transfer, including the child’s attorney of record
4 or DOJ Accredited Representative, legal service provider, or child advocate, as applicable”
5 within 48 hours *prior* to a UAC’s physical transfer. 45 C.F.R. § 410.1601(a)(3). Petitioner
6 has presented no competent evidence – or even allegation – that any of the UACs have
7 been formally notified that they are being transferred. Petitioner has presented no evidence
8 that there has been a recommendation that *any* of the UACs be transferred or that they have
9 been medically cleared for a transfer other than L.M.D.A. Indeed, as ORR affirmed, as of
10 the filing of this Return and Answer, there are *no* plans to transfer the UACs absent
11 exceptional circumstances outlined in the regulations (e.g. medical emergency).

12 As more fully explained below and supported by the Declaration of Assistant
13 Deputy Director for Policy for the Unaccompanied Alien Children Bureau Toby Biswas,
14 attached as Exhibit A, this Amended Petition should be denied for the following reasons:

- 15 • Petitioner failed to make a clear showing that the UACs have sustained or are
16 imminently in danger of sustaining direct injury at the behest of Respondent as
17 required to confer Article III standing.
- 18 • Petitioner’s notional concerns of a potential transfer out of Arizona are not
19 appropriately brought in a habeas action.
- 20 • Notwithstanding Petitioner’s speculative allegations, regulatory mechanisms are in
21 place that govern the transfer of UACs which would place the UACs or Petitioner
22 on notice of a transfer.
- 23 • Petitioner failed to verify the Amended Petition, which accordingly must be
24 dismissed for lack of competent evidence.
- 25 • Petitioner cited no other authority that affords her any grounds for relief.

26 Finally, differing from the original Petition, the Amended Petition now tacks on a
27 claim that HHS and ORR failed to proactively disclose agency records in violation of
28 FOIA’s “reading room provision” set forth in 5 U.S.C. § 552(a)(2).

1 The Court should deny the Amended Petition and dismiss Petitioners' FOIA claim.²

2 **II. ARGUMENT**

3 **A. Petitioner lacks Article III standing**

4 **1. Legal Standard**

5 "It goes without saying that those who seek to invoke the jurisdiction of the federal
6 courts must satisfy the threshold requirement imposed by Article III of the Constitution by
7 alleging an actual case or controversy." *City of Los Angeles v. Lyons*, 461 U.S. 95, 101
8 (1983). "[S]etting apart the 'Case' and 'Controversies' that are of the justiciable sort
9 referred to in Article III...is the doctrine of standing." *Lujan v. Defenders of Wildlife*, 504
10 U.S. 555, 560 (1992).

11 In order to establish standing, a plaintiff must meet three elements: (1) "an injury in
12 fact—an invasion of a legally protected interest which is (a) concrete and particularized
13 and (b) actual or imminent, not conjectural or hypothetical"; (2) a "causal nexus between
14 the injury and the conduct complained of"; and, (3) "it must be likely, as opposed to merely
15 speculative, that the injury will be redressed by a favorable decision." *Id.* at 560–61
16 (internal quotation marks and citations omitted).

17 With respect to the first element, "[a]bstract injury is not enough." *Lyons*, 461 U.S.
18 at 101. "The plaintiff must show that he has sustained or is immediately in danger of
19 sustaining some direct injury as the result of the challenged official conduct and the injury
20 or threat of injury must be both real and immediate, not conjectural or hypothetical." *Id.* at
21 101–02 (internal quotation marks omitted). The "threatened injury must be *certainly*
22 *impending* to constitute injury in fact." *Clapper v. Amnesty International USA*, 568 U.S.
23 398, 409 (2013) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)) (emphasis
24 added in *Clapper*). "[A]llegations of *possible* future injury' are not sufficient." *Id.* (quoting
25 *Whitmore*, 495 U.S. at 158) (emphasis added in *Clapper*). To that end, a "theory of
26 standing, which relies on a highly attenuated chain of possibilities, does not satisfy the

27
28 ² Respondent respectfully reserves the right to respond more fully under Fed. R. Civ. P.
12(a)(4), if necessary, after the Court's ruling on the instant pleading.

1 requirement that threatened injury must be certainly impending.” *Id.* at 410. In addition,
 2 “[p]ast exposure to illegal conduct does not in itself show a present case or controversy
 3 regarding injunctive relief...if unaccompanied by any continuing, present adverse effects.”
 4 *O’Shea v. Littleton*, 414 U.S. 488, 496 (1974). Instead, “when a plaintiff seeks prospective
 5 relief such as an injunction, the plaintiff must establish a sufficient likelihood of future
 6 injury.” *Food and Drug Admin. V. Alliance for Hippocratic Medicine*, 602 U.S. 367, 381
 7 (2024).

8 Petitioner bears the burden of establishing standing “as of the time [s]he brought th[e]
 9 lawsuit and maintaining it thereafter.” *Murthy v. Missouri*, 603 U.S. 43, 58 (2024) (quoting
 10 *Carney v. Adams*, 592 U.S. 53, 59 (2020) (alterations in *Murphy*). In addition, she must
 11 support each element of standing “with the manner and degree of evidence required at the
 12 successive stages of the litigation.” *Id.* (quoting *Lujan*, 504 U.S. at 561). At this preliminary
 13 stage of the proceedings, although Petitioner “may rely on the allegations in [her]
 14 Complaint and whatever evidence [she] submitted,” *Washington v. Trump*, 847 F.3d 1151,
 15 1159 (9th Cir. 2017), Petitioner “must make a ‘clear showing’ that [she is] ‘likely’ to
 16 establish each element of standing.” *Murphy*, 603 U.S. at 58. *See Washington*, 847 F.3d at
 17 1159 n.3 (noting the standards applicable to TROs and preliminary injunctions are
 18 substantially the same).

19 **2. Petitioner fails to articulate any threat of injury that is not conjectural**
 20 **or merely hypothetical**

21 Here, Petitioner has failed to make a clear showing that the UACs have sustained or
 22 are in imminent danger of sustaining direct injury because of official conduct. Since the
 23 filing of the original Petition, Respondents can only point to UAC L.M.D.A. who was
 24 placed in a heightened supervision facility because he had absconded from ORR custody
 25 at Child Crisis Arizona. *See Ex. A*, p. 5, ¶¶ 13-16. ORR may place an UAC who is a
 26 runaway risk in a heightened supervision facility without advanced notice. *See UACB*
 27
 28

1 Policy Guide § 1.2.5.³ However, Petitioner does not allege this placement was part of a
 2 targeted scheme to transfer and remove UACs.

3 Indeed, nowhere does the Amended Petition allege with sufficient specificity—
 4 much less present any evidence—that Respondent intends to “to move Petitioners to Texas
 5 or Louisiana, where they would not have access to the attorneys currently representing
 6 them.” Dkt 14 at 3, ¶ 4. Instead, Petitioner alleges that the government has started a policy
 7 of accelerated removal for UACs (Dkt 14 at 16-17, ¶¶ 30-32) and some UACs throughout
 8 the country were potentially identified for removal by June 30. *See* Dkt. 14 at 18, ¶ 34.⁴
 9 But Petitioner has submitted no evidence that the 108 UAC’s have been identified or that
 10 any transfer or removal action *was taken with respect to them* based on some policy
 11 determination or scheme to transfer UACs to Texas or otherwise. *See* Dkt. 14 at 18-19,
 12 ¶ 35; 23-24, ¶ 41 (Respondent has taken steps to increase legal services for UACs in
 13 Texas), Dkt. 14 at 19, ¶ 35 (shelters detaining immigrant children in states such as New
 14 York have been closed); Dkt. 14 at 20, ¶ 36 (Respondent is planning to open a 528-bed
 15 holding facility for migrant families and UACs in Louisiana)⁵; Dkt. 14 at 20-21, ¶ 37 (HHS
 16 attempted to terminate the Unaccompanied Children Program (UCP) in March 2025 but
 17 was enjoined from doing so); Dkt. 14 at 21-25, ¶¶ 38–40 (ORR is withholding payment
 18 from the prime contract holder for the UCP contract); Dkt. 14 at 12-13, 25-26, ¶¶ 24-26,
 19 ¶¶ 43-44, 46) (previous efforts by Respondent to repatriate Petitioners were harmful and
 20 future attempts would also be harmful).⁶ Again, the only UAC that Petitioner has alleged

21
 22 ³ It should be noted, that since being placed in a heightened supervision facility, on August
 23 9, 2026, local law enforcement in San Antonio, Texas, arrested L.M.D.A. for interference
 24 with public duties after he prevented care provider staff and medical staff from accessing
 and assisting another UAC during a mental health crisis. As a result, L.M.D.A. was
 discharged to local law enforcement. *See* Ex. A, p. 5, ¶ 16.

25 ⁴ “I believe the Department is racing to act before June 30, 2026.” Letter from Sen. Ron
 26 Wyden, Ranking Member, Sen. Comm. on Fin., to Robert F. Kennedy, Jr., Sec’y, U.S.
 Dep’t of Health & Hum. Servs., at 2 (June 24, 2026).

27 ⁵ The article does not specify when the facility will be opened.

28 ⁶ Petitioner claims, “Florence Project staff reported that children in ORR care in Arizona
 cried all day on Friday, July 3, and could not sleep over the weekend after being informed

1 has been moved was L.A.M.D. but that was because he had absconded. *See* Dkt. 14 at 45;
2 Ex. A, p. 5, ¶¶ 13-16. None of the allegations describe a certainly impending plan to
3 transfer the 108 UACs at issue to Texas or Louisiana.

4 Crucially, although Petitioner has alleged that “three news outlets” reported a plan
5 by Respondent to transfer the 108 UACs at issue, none of the articles cited by Petitioner
6 constitute admissible evidence nor support this claim. The three news outlets cite to a letter
7 by Senator Ron Wyden from June 24, 2026 to allege that “ORR [has] identified more than
8 500 unaccompanied migrant children in federal custody for possible removal from the
9 United States, reportedly focusing on children held for at least 180 days and categorized as
10 lacking a viable sponsor.” Dkt. 14 at 18-20, ¶ 34 (CNN article), ¶ 35 (Texas Tribune
11 article); ¶ 36 (Associated Press article). The letter from Senator Wyden states his mistaken
12 belief that “the Department [was] racing to act *before June 30, 2026*, the explicit deadline
13 by which immigration courts have been instructed to conclude these case proceedings.”
14 Letter from Sen. Ron Wyden, Ranking Member, Sen. Comm. on Fin., to Robert F.
15 Kennedy, Jr., Sec’y, U.S. Dep’t of Health & Hum. Servs., at 2 (June 24, 2026). Petitioner
16 filed the original Petition on July 6, 2026, a week after the supposed date for removal. With
17 the filing of the Amended Petition, Petitioner still fails to specify any attempts by
18 Respondent to move or transfer the UACs on whose behalf the lawsuit is filed on some
19 broad swath policy of accelerated removal. It has now been 49 days since the alleged June
20 30, 2026 “deadline”.

21 Moreover, the letter in question does not identify any of the 108 UACs in this
22 Amended Petition as those listed for removal; it only describes speculation that “over 500
23 unaccompanied children currently in the care and custody of [ORR] as targets for expedited
24 removal under an unprecedented legal framework.” *Id.* at 1. According to ORR’s website,
25 the average number of UACs in care for the month of June was 1,796. *Average Monthly*
26 *Data*, Office of Refugee Resettlement, *available at* <https://acf.gov/orr/about/ucs/facts-and->

27 _____
28 of a potential plan to transfer them out of Arizona.” Dkt. 14, at 26, ¶ 44. Petitioner does not
specify who informed them of this “potential plan,” whether it was counsel or ORR staff.

1 data (last visited July 13, 2026). Petitioner has not explained how they came to believe that
 2 *the 108 UACs identified in the Amended Petition* were allegedly targeted for transfer and
 3 removal. Although the Amended Petition contains general grievances and speculative
 4 concerns, Petitioner has failed to make a clear showing that the 108 UACs face a “threat
 5 of injury . . . both real and immediate, not conjectural or hypothetical.” *Lyons*, 461 U.S. at
 6 101–02 (internal quotation marks omitted).

7 **3. There are *no* current plans to transfer any other individual from the**
 8 **group of 108 UACs (other than L.M.D.A. who was already transferred)**

9 Indeed, as the Declaration of Assistant Deputy Director for Policy Toby Biswas
 10 makes clear, “ORR has no current plans to transfer any other individual from the group of
 11 108 petitioners from Arizona to facilities in Texas, Louisiana, or any other state unless
 12 otherwise warranted by specific circumstances, such as a medical emergency or security
 13 concern, consistent with 45 C.F.R. § 410.1601 and UACB Policy Guide § 1.4.” Ex. A, p.
 14 5, ¶ 17. Petitioner, instead, principally relies on past actions to insinuate Respondent will
 15 act nefariously in the future. Petitioner highlights Respondent’s attempt over Labor Day
 16 weekend 2025 to repatriate UACs, which this Court enjoined. Dkt. 14, at 12-14, ¶¶ 25-27;
 17 *see Kettlewell v. Noem*, No. CV-25-00491-TUC-RM, 2025 WL 2733309 (D. Ariz. Sept.
 18 25, 2025). However, as noted above, “past wrongs do not in themselves amount to that
 19 real and immediate threat of injury necessary to make out a case or controversy.” *Lyons*,
 20 461 U.S. at 103.

21 **4. Governing regulations afford the UACs the protections Petitioner seeks**

22 As noted above, the Amended Petition contains notional concerns that the UACs
 23 will be transferred and prevented access to counsel as a result. However, Petitioner’s theory
 24 is premised on speculative contingencies that the Respondent will violate the law, which
 25 is insufficient to confer standing. “[A] claim of standing which is not only speculative, but
 26 is predicated upon the violation of an unchallenged law is insufficient.” *Nelsen v. King*
 27 *Cnty.*, 895 F.2d 1248, 1253 (9th Cir. 1990).
 28

1 Governing regulations provide a number of procedural protections for UACs prior
2 to their transfer. Section 410.1601 of the Foundational Rule⁷ requires notice to “all
3 appropriate interested parties of the transfer, including the child’s attorney of record or a
4 U.S. Department of Justice Accredited Representative, legal service provider, or child
5 advocate, as applicable” within 48 hours prior to a UAC’s physical transfer. 45 C.F.R. §
6 410.1601(a)(3). *See also* ORR Unaccompanied Alien Child Bureau Policy Guide (“UACB
7 Policy Guide”), § 1.4, Transfers within the ORR Care Provider Network, *available at*
8 <https://tinyurl.com/b225ysvw> (last visited August 18, 2026). Only under unusual or
9 compelling circumstances—such as where the safety of the UAC or others is threatened,
10 where the UAC has been determined to be a runaway risk, or where the interested party
11 has waived notice—must notice be provided within 24 hours *following* transfer. *See* 45
12 C.F.R. § 410.1601(a)(3); UACB Policy Guide, § 1.4. Further, other provisions of the
13 Foundational Rule could place the UACs and/or Petitioner on notice of a possible transfer.
14 Notably, a care provider facility must make a transfer recommendation if an alternate
15 placement within three business days of identifying a need to transfer them (45 C.F.R.
16 § 410.1601(a)(1)) and, unless waived, a care provider facility must ensure the UAC is
17 medically cleared for transfer. *See* 45 C.F.R. § 410.1601(a)(2).

18 Pursuant to 8 U.S.C. § 1232(c)(5), the Secretary of Health and Human Services must
19 ensure that all UACs in custody (excluding certain UACs from contiguous countries) “have
20 counsel to represent them in legal proceedings or matters and protect them from
21 mistreatment, exploitation, and trafficking.” 45 C.F.R. § 410.1309, sets forth ORR’s
22 responsibilities in relation to legal services for unaccompanied children consistent with 8
23 U.S.C. § 1232(c)(5). *See* 45 C.F.R. § 410.1309(a)(1). Upon transfer to a new ORR care
24 provider facility (excluding a long-term home care or transitional housing), a UAC must
25 be provided a “presentation concerning the rights and responsibilities of undocumented
26

27 ⁷ In April 2024, ORR promulgated the Unaccompanied Children Program Foundational
28 Rule (hereinafter, “Foundational Rule”), codified at 45 C.F.R. part 410, to establish
comprehensive regulations governing its UAC program.

1 children in the immigration system” and a “confidential legal consultation with a qualified
 2 attorney (or paralegal working under the direction of an attorney, or DOJ Accredited
 3 Representative) to determine possible forms of relief from removal in relation to the
 4 unaccompanied child's immigration case . . .” 45 C.F.R. § 410.1309(a)(2)(i) and (v).
 5 Direct immigration legal representation services are also available, subject to
 6 appropriations and ORR discretion, for certain UACs. *See* 45 C.F.R. § 410.1309(a)(4).
 7 Additionally, certain non-immigration related legal representation is available, subject to
 8 appropriations and ORR discretion, for certain UACs. *See* 45 C.F.R. § 410.1309(b). 45
 9 C.F.R. § 410.1309, lays out general standards for the legal services offered under the
 10 regulation. *See* 45 C.F.R. § 410.1309(c).

11 No one disputes that the Respondent has a duty to follow the law—which includes
 12 compliance with regulations governing the transfer of UACs and certain legal services they
 13 may receive. While Petitioner has not alleged any real or immediate possibility of injury
 14 to confer standing, the Foundational Rule regulations and ORR guidance—particularly
 15 notice prior to transfer sans some emergency or compelling circumstance, 45 C.F.R. §
 16 410.1601(a)(3)—afford Petitioner and the UACs genuine grounds to later raise any issue
 17 as to whether a transfer unconstitutionally interferes with their access to legal services or
 18 counsel.

19 For these reasons, Petitioner lacks standing, and this Court lacks subject matter
 20 jurisdiction over this habeas petition.

21 **B. A habeas petition is not the appropriate procedural vehicle for Petitioner's**
 22 **requested relief**

23 The Constitution guarantees the availability of the writ of habeas corpus “to every
 24 individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525
 25 (2004) (*citing* U.S. Const., Art I, § 9, cl. 2). “The essence of habeas corpus is an attack by
 26 a person in custody upon the legality of that custody, and . . . the traditional function of the
 27 writ is to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484
 28 (1973). This court may only grant a petition for writ of habeas corpus if the federal

petitioner can demonstrate that he “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(a), (c)(3). “Release is the only available remedy—and thus a claim is at the core of habeas—if a successful petition demonstrates that the *detention itself* is without legal authorization,” *Pinson v. Carvajal*, 69 F.4th 1059, 1070 (9th Cir. 2023) (emphasis in original).

Here, Petitioner is not challenging the underlying legal basis or authority for ORR’s custody of the UACs. Petitioner is, instead, challenging the conditions of confinement by seeking to enjoin transfer from one care provider to another. Because Petitioner has not challenged confinement or its duration, Petitioner is not entitled to habeas relief.

C. Notwithstanding a habeas petition being improper, the Amended Petition must be dismissed because it is not verified

The federal habeas statute provides that the “[a]pplication for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf.” 28 U.S.C. § 2242 (emphasis added). Here, the Amended Petition is not signed or verified by *Petitioner* as required by 28 U.S.C. § 2242. The failure to verify the petition requires the Amended Petition to be dismissed since there is no competent evidence supporting it. *See Gardaloev v. Lyons*, No. 5:26-CV-00800-JGB-KES, 2026 WL 1047040, at *2 (C.D. Cal. Mar. 10, 2026), *report and recommendation adopted*, No. 5:26-CV-00800-JGB-KES, 2026 WL 1189696 (C.D. Cal. Apr. 30, 2026) (dismissing habeas petition where the “facts are not properly ‘verified’ such that they can be considered competent evidence” where it was signed by petitioner’s counsel only). *See also Wilson v. Dixon*, 256 F.2d 536, 537 (9th Cir. 1958) (concluding the district court lacked habeas jurisdiction where the petition did not explain “why the detained person [did] not sign and verify the complaint” (citation modified)).

For this independent reason, the Amended Petition must be dismissed.

D. Petitioner is not entitled to any other relief in this habeas action

Aside from habeas authority, Petitioner claims relief pursuant to the Declaratory Judgment Act as well as the All Writs Act. *See* Dkt. 14 at 9-10, ¶ 20. Petitioner also says

1 this Court has jurisdiction over the Amended Petition pursuant to the Trafficking Victims
 2 Protection Reauthorization Act of 2008 (“TVPRA”). See Dkt. 14 at 9, ¶ 20. All relief and
 3 or claim of jurisdiction under these bases are unfounded as a matter of law.

4 **1. Petitioner cannot obtain a declaratory judgment in a habeas action**

5 Petitioner does not specify what declaration she seeks from the Court in any specific
 6 claim other than to say in the Prayer for Relief that she seeks a declaration that “transfer
 7 outside the state of Arizona outside of the circumstances and considerations in paragraph
 8 (b) violates the TVPRA, the Due Process Clause of the Fifth Amendment, ORR’s own
 9 regulations on point, and the First Amendment.” Dkt. 14 at 47, ¶ d. Paragraph (b)
 10 references conditions Petitioner would request this Court place on the Respondent in
 11 transferring UACs from Arizona. Dkt. 14 at 47, ¶ b. Thus, Petitioner’s claim for a
 12 declaration is just the habeas relief sought by the Amended Petition. Nonetheless,
 13 Petitioner cannot obtain a declaratory judgment in a habeas action. *See Herrera v. Noem*,
 14 825 F. Supp. 3d 1025, 1038 (D. Ariz. 2026) (“[D]eclaratory judgments must yield to the
 15 exclusive remedies that must be pursued in habeas.”); *Trump v. J. G. G.*, 604 U.S. 670, 672
 16 (2025). And Petitioner must have standing to pursue a declaration, which she does not (see
 17 above). The federal court’s “role is neither to issue advisory opinions nor to declare rights
 18 in hypothetical cases, but to adjudicate live cases or controversies consistent with the
 19 powers granted to the judiciary.” *Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d
 20 1134, 1138 (9th Cir. 2000) (en banc).

21 **2. The All Writs Act does not apply to this habeas action**

22 It is unclear why Petitioner asserts the All Writs Act confers jurisdiction. It does
 23 not. As the Supreme Court has explained, “[w]hile the All Writs Act authorizes
 24 employment of extraordinary writs, it confines the authority to the issuance of process ‘in
 25 aid of’ the issuing court’s jurisdiction.” *Clinton v. Goldsmith*, 526 U.S. 529, 534 (1999)
 26 (quoting 28 U.S.C. § 1651(a)). In that way, the All Writs Act empowers this court to issue
 27 writs in the service of otherwise-existing jurisdiction, but “does not enlarge that
 28 jurisdiction.” *Id.* at 535; *see also United States v. Denedo*, 556 U.S. 904, 914 (2009) (“The

1 authority to issue a writ under the All Writs Act is not a font of jurisdiction.”). Accordingly,
 2 Petitioner’s assertion of All Writs Act jurisdiction is not truly an alternative basis for
 3 jurisdiction or relief but dependent on habeas jurisdiction. Because habeas jurisdiction does
 4 not exist, any reliance on the All Writs Act must be rejected. *See e.g. Wang v. United States*
 5 *Dep’t of Homeland Sec.*, No. CV 26-00009 MWJS-KJM, 2026 WL 452343, at *5 (D. Haw.
 6 Feb. 17, 2026).

7 **3. Petitioner cannot claim relief under the TVPRA**

8 The TVPRA does not provide a private right of action for Petitioner’s claim. The
 9 TVPRA provides both criminal and civil penalties for sex trafficking. *See* 18 U.S.C.
 10 §§ 1591, 1595. Section 1595(a) creates civil liability for two—and only two—categories
 11 of defendants: those who have themselves committed a criminal offense under § 1591 of
 12 the TVPRA, and (2) those who are not themselves subject to criminal liability but who
 13 knowingly benefitted from participation in a venture that they knew or should have known
 14 was committing an offense under § 1591 of the TVPRA. *See A.D. v. Wyndham Hotels &*
 15 *Resorts, Inc.*, 2020 U.S. Dist. LEXIS 250759 (E.D. Va. July 22, 2020). However, the
 16 TVPRA does *not* provide a standalone claim to be brought against the government for a
 17 violation of the Act and any relief thereunder.

18 **E. The FOIA claim must be dismissed**

19 **1. Petitioners’ FOIA claim is improperly joined as a claim in this**

20 **Amended Petition**

21 Habeas corpus and FOIA claims are fundamentally distinct in both substance and
 22 procedure, making joinder improper. A habeas petition is an expedited vehicle to challenge
 23 the legality of custody, whereas a FOIA claim is a standard civil mechanism to obtain
 24 agency records. Unsurprisingly, their procedural tracks clash. Response deadlines for
 25 habeas actions are strictly expedited (see General Order 26-09), while 5 U.S.C. §
 26 552(a)(4)(C) provides an agency 30 days to respond to a FOIA complaint. Furthermore,
 27 while habeas petitions demand rapid resolution, FOIA litigation routinely involves months
 28 of document searches, index preparation, and administrative processing before reaching

1 summary judgment. To avoid administrative inefficiency and delay, these claims are best
2 litigated separately.

3 If this Court does not dismiss this claim for the reasons outlined immediately below,
4 it should sever the claims by requiring a separate action be opened for the FOIA claim.

5 **2. Petitioner fails to state a claim for relief under 552(a)(2)**

6 Petitioners claim that HHS and ORR failed to proactively disclose agency records
7 in violation of FOIA's "reading room provision" set forth in 5 U.S.C. § 552(a)(2). The
8 reading provision requires that agencies "make available for public inspection in an
9 electronic format" enumerated categories of records. *Id.* Petitioners allege that ORR
10 violated the reading room provision by creating and then relying "on policies, manuals,
11 staff instructions, and guidance about how it would administer, suspend, transition, or
12 terminate the legal services contract for unaccompanied children". Dkt. 14 at 6, ¶9. *See*
13 *also* Dkt. 14 at 45, ¶94. Petitioners also allege that ORR have not published "policies,
14 manuals, directives, guidance, and staff instructions" regarding "any planned transfer of
15 children in ORR custody". Dkt. 14 at 6, ¶9.

16 Petitioners maintain these records fall within 5 U.S.C. § 552(a)(2)(B) and (C). 5
17 U.S.C. § 552(a)(2)(B) provides that "statements of policy and interpretation which are
18 adopted by the agency and not published in the Federal Register" must be published. 5
19 U.S.C. § 552(a)(2)(C) provides that "administrative staff manuals and instructions to staff
20 that affect a member of the public" must be published.

21 To survive dismissal, a complaint must contain sufficient factual matter,
22 disregarding all "conclusory" statements, to "state a claim to relief that is plausible on its
23 face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550
24 U.S. 544, 570 (2007)). Consequently, consistent with these pleading standards, a plaintiff
25 raising a violation of FOIA's reading room provision must plausibly allege that the
26 withheld records fall within one of the enumerated categories of records which must be
27 available for public inspection. *See Citizens for Resp. & Ethics in Washington v. United*
28

1 *States Dep't of Just.*, 922 F.3d 480, 488 (D.C. Cir. 2019) (applying pleading standard to
2 reading room claim).

3 Here, Petitioners only make conclusory or formulaic recitations of the types of
4 records. *Compare* Dkt. 14 at 6, ¶9 (“policies, manuals, staff instructions, and guidance”
5 with 5 U.S.C. § 552(a)(2)(B) and (C) (“statements of policy and interpretation” and “staff
6 manuals and instructions”). This is the exact “sue first, ask questions later” approach which
7 the pleading standard is designed to discourage. Petitioners fail to state an appropriate
8 claim for any FOIA violation.

9
10 **III. Conclusion**

11 For the foregoing reasons, Respondent respectfully requests that this Court deny the
12 Amended Petition and dismiss Petitioners’ FOIA claim.

13 Respectfully submitted this 18th day of August, 2026.

14
15 TIMOTHY COURCHINE
United States Attorney
District of Arizona

16
17 s/Alex Beeman
ALEX BEEMAN
Assistant United States Attorney
Attorneys for Respondent
18
19
20
21
22
23
24
25
26
27
28