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

14 E.A.D.G., a minor, by and through
15 Rebecca Popuch, as Next Friend of
Minor,

16 Petitioner,

17 v.

18 TROY MCNAIR, Residential Director
of Rancho San Antonio; et al.,

19 Respondents.
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Case No. 2:26-cv-07706-AS

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

Honorable Alka Sagar
United States Magistrate District

1 **I. INTRODUCTION**

2 The minor Petitioner in this matter, E.A.D.G., is an unaccompanied alien child
3 (“UAC”), as defined at 6 U.S.C. § 279(g)(2), who was referred into the care and custody
4 of the Office of Refugee Resettlement (“ORR”) and placed in an ORR care provider
5 facility on March 4, 2026. *See Declaration of Toby Biswas* (“Biswas Decl.”) ¶ 33.

6 As discussed at length in the declaration of Toby Biswas, filed herewith, there are
7 outstanding requirements for the sponsorship application of E.A.D.G.’s potential
8 sponsor, H.Y.G.I., his mother, as well as documentation needed from his older brother,
9 who is his potential alternate care giver (ACG). *See Biswas Decl.* ¶ 66. These essential
10 pending sponsor vetting requirements include, among other pending items,
11 documentation of a H.Y.G.I.’s history of domestic violence, proof of income, a home
12 study report, an in-person identification (ID) check, DNA testing, and updated internet
13 background checks which are meant to ensure that children are only released to sponsors
14 who are capable of providing for their physical and emotional well-being. Upon receipt
15 of the outstanding items, ORR will promptly make its final sponsor suitability
16 determination and release decision. *Id.*

17 For an unaccompanied alien child, ORR cannot presume that a sponsor applicant,
18 even when a parent or close relative, is able to adequately and properly take care of the
19 child’s needs. ORR must follow the proper processes and investigation to ensure that the
20 child’s release to a sponsor is safe one.

21 And while Ms. Popuch insists that E.A.D.G. must be released to his mother,
22 H.Y.G.I., *immediately*, this request is inappropriate where ORR has not yet made a
23 determination regarding H.Y.G.I. and the A.C.G.’s suitability and a decision regarding
24 release, and no other potential sponsor has come forward for vetting.

25 The applicable suitability determination process needs to be followed to ensure
26 E.A.D.G.’s safety and well-being. Having failed to establish unlawful custody, the
27 Petition should be denied.
28

II. LEGAL FRAMEWORK

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 UACs 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 UACs. 6 U.S.C. § 279(b)(1)(A) & (b)(2)(A)(ii).

B. The Trafficking Victims Protection Reauthorization Act of 2008

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

1 from immigration databases: “Not later than 2 weeks after receiving a request from the
2 Secretary of Health and Human Services, the Secretary of Homeland Security shall
3 provide information necessary to conduct suitability assessments from appropriate
4 Federal, State, and local law enforcement and immigration databases.” 8 U.S.C. §
5 1232(c)(3)(C). These responsibilities are carried out through cooperative agreements and
6 contracts with care providers under ORR policies and oversight. *See* 8 U.S.C. § 1232(i);
7 31 U.S.C. § 6305.

8 **C. The Foundational Rule**

9 In April 2024, ORR promulgated the Unaccompanied Children Program
10 Foundational Rule (the “Foundational Rule”), codified at 45 CFR part 410, to establish
11 comprehensive regulations governing its UAC program. The Foundational Rule also
12 implements provisions of the Flores Settlement Agreement (“FSA”) relevant to ORR’s
13 care and custody of UACs and thus led to the conditional and partial termination of the
14 FSA as to ORR in June 2024.¹ *Cf. Reno v. Flores*, 507 U.S. 292 (1993) (upholding INS
15 regulations about the release of UACs to properly vetted sponsors). Effective July 1,
16 2024, the Foundational Rule formalized previously informal procedures, including those
17 related to ORR’s release policies and practices.

18 The Foundational Rule provides that ORR identifies a standard program
19 placement for the UACs upon notification from any federal department or agency that a
20 child in its custody is a UAC and therefore must be transferred to ORR custody. 45
21 C.F.R. § 410.1101(b). ORR then works with the referring federal government
22 department or agency to accept transfer of custody of the UAC, consistent with the
23 statutory and regulatory requirements at 8 U.S.C. § 1232(b)(3) and 45 C.F.R. §
24 410.1101(c). ORR places each UAC in the least restrictive setting that is in the best
25 interest of the child and appropriate to the unaccompanied alien child’s age and
26

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

1 individualized needs. 45 C.F.R. § 410.1103(a). ORR may place a child in a shelter
2 facility, foster home or group home (which may be therapeutic), heightened supervision
3 facility or secure facility (including residential treatment centers), or other care facility
4 that can provide for their specific individualized needs, including an out-of-network
5 (“OON”) placement (which may be restrictive or non-restrictive). 45 C.F.R. § 410.1102;
6 *see also* ORR UACB Policy Guide § 1.2, [https://acf.gov/orr/policy-](https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide)
7 [guidance/unaccompanied-children-bureau-policy-guide](https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide) (last visited June 20, 2026).
8 ORR also considers several factors relevant to the UAC’s placement, including but not
9 limited to: danger to self; danger to the community/others; runaway risk; trafficking in
10 persons or other safety concerns; age; and gender. 45 C.F.R. § 410.1103(b).

11 ORR is required to make and record the prompt and continuous efforts on its part
12 towards release of children in its custody to appropriately vetted sponsors. *See* 45 C.F.R.
13 § 410.1203(a). All individuals seeking to sponsor a child in ORR custody (notably, even
14 a UAC’s parent or legal guardian) must undergo the sponsor assessment process,
15 consistent with ORR’s statutory responsibilities. *See* 8 U.S.C. § 1232(c)(3)(A) (“an
16 unaccompanied alien child may not be placed with a person or entity unless the
17 Secretary of Health and Human Services makes a determination that the proposed
18 custodian is capable of providing for the child’s physical and mental well-being”); 45
19 C.F.R. §§ 410.1201(a), 1202(b). This understanding was further reinforced in the One,
20 Big, Beautiful Bill Act of 2025, Pub. L. No. 119-21, title VIII, subtitle H, section
21 87001(c)(1) (2025) (defining “potential sponsor” as “an individual or entity who applies
22 for the custody of an unaccompanied alien child”).

23 The suitability assessment includes “verification of the potential sponsor’s
24 identity,” 45 C.F.R. § 410.1202(b), “verification of the employment, income, or other
25 information provided by the potential sponsor as evidence of the ability to support the
26 child,” 45 C.F.R. § 410.1202(c), and “[i]n all cases, ORR shall require background and
27 criminal records checks,” *id.*, which may include a criminal history check based on
28 fingerprints. The Foundational Rule thus reinforces congressional intent articulated in

1 the HSA and TVPRA that HHS ensure UAC protection from human traffickers and
2 release UACs only to those sponsors capable of protecting their well-being. *See* 45
3 C.F.R. § 410.1003; *see also* 8 U.S.C. § 1232(c)(3)(A)–(C) (requiring such vetting be
4 conducted, along with potential home studies and further information sharing with DHS
5 to effectuate that process).

6 **D. Human Trafficking and UAC Sponsorship Fraud**

7 In December 2022, the U.S. Senate’s Committee on Homeland Security and
8 Governmental Affairs published a report detailing the inadequate treatment of UACs in
9 federal care and the insufficient safeguards to ensure they are not trafficked or abused
10 following their release. *See* United States Senate Committee on Homeland Security and
11 Governmental Affairs, Minority Staff Report, Federal Care of Unaccompanied Children:
12 Minors Remain Vulnerable to Trafficking and Abuse (“Minority Report”),
13 [https://www.govinfo.gov/content/pkg/GOVPUB-Y4_G74_9-PURL-](https://www.govinfo.gov/content/pkg/GOVPUB-Y4_G74_9-PURL-gpo190271/pdf/GOVPUB-Y4_G74_9-PURL-gpo190271.pdf)
14 [gpo190271/pdf/GOVPUB-Y4_G74_9-PURL-gpo190271.pdf](https://www.govinfo.gov/content/pkg/GOVPUB-Y4_G74_9-PURL-gpo190271/pdf/GOVPUB-Y4_G74_9-PURL-gpo190271.pdf) (last visited May. 20,
15 2026). A congressional subcommittee launched its investigation in 2015, following
16 reports that ORR placed eight children with members of a human trafficking ring that
17 forced the children to work on an egg farm for 12 hours a day, six or seven days a week.
18 *See id.* at 26.

19 In the December 2022 report, it was noted that despite the increased number of
20 UACs entering the United States in 2021 and 2022, ORR’s completion of background
21 checks significantly declined from FY 2019. *See id.* at 35–37. Moreover, the report
22 identified the lack of adequate background checks for potential sponsors and the waiver
23 of background check requirements on household members, even when releasing a child
24 to their parent, as areas where additional safeguard measures were necessary. *See id.* at
25 37–45. It was therefore recommended that ORR update the UACB Policy Guide to
26 indicate that if a potential sponsor or household member refuses to comply with required
27 background checks, ORR should prohibit further consideration of the release of a child
28 into their custody until such a check could be completed. *See id.* at v.

1 In March 2023, after a Florida grand jury published a report outlining over 100
2 allegations concerning deficiencies in ORR's UAC Program, ORR established an
3 Integrity & Accountability ("I&A") Team to detect, prevent, mitigate, and report fraud
4 and exploitation perpetrated by sponsors, parents, and UACs. *See* Office of Refugee
5 Resettlement, Administration for Children and Families, Recommendations to Combat
6 Trafficking and Fraud in the UAC Program ("ORR Recommendations") at 1–3 (Feb. 4,
7 2025), <https://www.scribd.com/document/830798358/HHS-ORR-Report> (last visited
8 May 20, 2026).

9 The I&A Team identified several instances of fraudulent sponsorship applications,
10 document falsifications, and patterns of human trafficking and exploitation. *See id.* at 3–
11 8. For example, the I&A Team identified instances of children and sponsors using
12 altered birth certificates or unaltered birth certificates belonging to another person. *See*
13 *id.* at 7. The I&A Team also found that such fraud often involved collusion with others,
14 including a family member in the child's country of origin. *See id.* In one instance, the
15 I&A Team identified 10 UACs who were released to sponsors who committed
16 intentional document fraud in October 2024. *See id.*

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

1 revealed that less than 1% of sponsorship applications had been denied in recent years.

2 *See id.*

3 **E. ORR Release Policies and Practices**

4 To carry out its statutory mandate under the HSA and TVPRA, and consistent
5 with the Foundational Rule, ORR has developed policies and procedures for identifying,
6 and conducting suitability assessments of, potential sponsors. These procedures are
7 generally set out in ORR's publicly available UACB Policy Guide (mentioned above). A
8 full assessment of a potential sponsor's suitability is particularly appropriate because
9 ORR is not a law or immigration enforcement agency and lacks the authority to hold
10 individuals accountable by reassuming care if the sponsor abuses or neglects a child after
11 a UAC has been released from ORR custody. Biswas Decl. ¶ 14. Rather, ORR only takes
12 children into its custody upon referral by another federal agency, as described in statute.
13 *See* 8 U.S.C. § 1232(b)(3) (requiring, absent exceptional circumstances, that any agency
14 of the federal government transfer the custody of a child to HHS no later than 72 hours
15 after determining that the child is a UAC). In this regard, ORR is also very different
16 from state child welfare agencies, which typically retain such authority post-placement.
17 Biswas Decl. ¶ 14.

18 Accordingly, ORR must front-load child safety considerations in its identity
19 verification and sponsor-vetting policies. *Id.*

20 In light of ORR's obligation to protect UACs from smugglers, traffickers, and
21 others who may seek to victimize them, "safe and timely release . . . involves several
22 steps, including: the identification of sponsors; sponsor application; interviews; the
23 assessment (evaluation) of sponsor suitability, including verification of the sponsor's
24 identity and relationship to the child (if any), background checks, and in some cases
25 home studies; and post-release planning." UACB Policy Guide § 2.1; *see also* Biswas
26 Decl. ¶ 15. There are four categories of potential sponsors: (1) Category 1, consisting of
27 parents or legal guardians; (2) Category 2, consisting of siblings, half-siblings,
28 grandparents, or immediate relatives (such as aunts, uncles, and cousins), and other

1 biological relatives and relatives through marriage; and (3) Category 3, consisting of
2 other sponsors, such as distant relatives and unrelated adult individuals. UAC Policy
3 Guide § 2.2.1; Biswas Decl. ¶ 15. ORR (through its care providers) conducts a suitability
4 assessment of the potential sponsor, including a review of the sponsor's strengths,
5 resources, risk factors, and special concerns within the context of each child's needs,
6 strengths, resources, risk factors, and relationship to the sponsor. UAC Policy Guide §§
7 2.2.2, 2.4; Biswas Decl. ¶ 18.

8 A potential sponsor must complete a sponsorship application, provide unexpired
9 government-issued identification documentation for the sponsor and any other adults
10 living in the household or identified in a sponsor care plan, and, along with any adult
11 living in his household, undergo a background check. UACB Policy Guide §§ 2.2.4, 2.5;
12 Biswas Decl. ¶ 16. All potential sponsors must also submit proof of address, income,
13 sponsor-child relationship, and criminal history documents (if applicable). UACB Policy
14 Guide § 2.2.4; Biswas Decl. ¶ 16.

15 Additionally, in certain circumstances a home study, which consists of interviews,
16 a home visit, and a written report containing a case worker's findings, is performed.
17 UACB Policy Guide § 2.4.2; Biswas Decl. ¶¶ 18-21.

18 Once the assessment of the potential sponsor is complete, the care provider makes
19 a release recommendation to ORR. UACB Policy Guide § 2.7; Biswas Decl. ¶ 23. The
20 recommendation must take into consideration all relevant information, including the
21 report and recommendations from a home study, if conducted, laws governing the
22 process, and other facts in the case. Biswas Decl. ¶ 23. ORR makes the final release
23 decision. UACB Policy Guide § 2.7; Biswas Decl. ¶ 23. Release decisions include: (1)
24 approve release to sponsor; (2) approve release with post-release services; (3) conduct a
25 home study before a final release decision; (4) deny release; or (5) remand for further
26 information. UACB Policy Guide § 2.7; Biswas Decl. ¶ 23. The Policy Guide describes
27 various circumstances under which ORR will or may deny release.
28

1 Generally, ORR denies release if: (1) the potential sponsor is not willing or able to
 2 provide for the child's physical or mental well-being; (2) the potential sponsor is not
 3 willing to complete the mandatory fingerprint check; (3) the physical environment of the
 4 home presents a risk to the child's safety or well-being; or (4) release of the UAC would
 5 present a risk to him or herself, the sponsor, household, or community. UACB Policy
 6 Guide § 2.7.4; Biswas Decl. ¶ 24; *see also* 45 C.F.R. § 410.1205 (Release decisions;
 7 denial of release to a sponsor).

8 **F. The One, Big, Beautiful Bill Act ("OBBBA") Section 87001**

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

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

15 A. the name of the potential sponsor and of all adult residents of
 16 the potential sponsor's household;

17 B. the social security number or taxpayer identification number of
 18 the potential sponsor and of all adult residents of the potential sponsor's
 19 household;

20 C. the date of birth of the potential sponsor and of all adult
 21 residents of the potential sponsor's household;

22 D. the validated location of the residence at which the
 23 unaccompanied alien child will be placed;

24 E. an in-person or virtual interview with, and suitability study
 25 concerning, the potential sponsor and all adult residents of the potential
 26 sponsor's household;

27 F. contact information for the potential sponsor and for all adult
 28 residents of the potential sponsor's household; and

1 G. the results of all background and criminal records checks for the
2 potential sponsor and for all adult residents of the potential sponsor's
3 household, which shall include, at a minimum, an investigation of the public
4 records sex offender registry, a public records background check, and a
5 national criminal history check based on fingerprints.

6 OBBBA, Public Law 119-21, 139 Stat. 72. Section 87001 (July 4, 2025); *see also*
7 Biswas Decl. ¶ 17. These requirements ensure that ORR's obligation to undertake a full
8 assessment of each potential sponsor's suitability is completed before ORR releases the
9 child from its custody.

10 **G. Appeals of ORR Decisions**

11 If ORR denies the application of a parent, legal guardian, or close relative
12 potential sponsor, the denied potential sponsor may appeal that decision through an
13 administrative process. 45 C.F.R. § 410.1206; Biswas Decl. ¶ 27. ORR policy requires
14 that, if ORR denies the sponsor application of a parent, legal guardian, or close relative,
15 the ORR Director, or their neutral and detached designee must send the potential sponsor
16 a Notification of Denial Letter, after receiving all the required information and
17 documentation in a specific case. *See* 45 C.F.R. § 410.1205(c); UACB Policy Guide §
18 2.7.7; Biswas Decl. ¶ 27. Denied potential sponsors who receive this letter may seek an
19 appeal of ORR's denial decision, with a hearing or without a hearing. *Id.* § 2.7.8; Biswas
20 Decl. ¶ 27.

21 In deciding an appeal of a release denial, the Departmental Appeal Board's
22 ("DAB's") role (as the Assistant Secretary's neutral and detached designee who was not
23 involved in the denial decision) is not to substitute its judgment for that of ORR, but to
24 determine whether ORR acted within its statutory authority and applied its regulations
25 and policies reasonably, and whether its decision to deny the Petitioner sponsorship of
26 the UAC was supported by substantial evidence. *See* 45 C.F.R. § 410.1206; UACB
27 Policy Guide § 2.7.4; Biswas Decl. ¶ 27.

1 The burden of proof is on the Petitioner to demonstrate that ORR's decision to
 2 deny release was not based on substantial evidence and the standard that the DAB is to
 3 apply is a preponderance of the evidence. *See Lucas R v. Becerra*, No. CV 18-5741-
 4 DMG (PLAx), 2022 WL 2177454, *28 (C.D. Cal. Mar. 11, 2022) ("The Court will not
 5 require the case management team to determine that a sponsor is suitable by a clear and
 6 convincing evidentiary standard . . . Due process does not demand that the Court impose
 7 procedures that shift the burden to ORR to prove that the sponsor is unfit. Instead, a
 8 minor's rights are adequately protected so long as the minor and sponsor have the
 9 opportunity to appeal a denial and submit additional evidence of a sponsor's fitness, if
 10 necessary.").

11 The DAB's decision to affirm or overrule ORR's decision to deny release to a
 12 potential sponsor is the final administrative decision of the agency on the application that
 13 had been under consideration. UACB Policy Guide § 2.7.8; Biswas Decl. ¶ 28. However,
 14 if there is new information or a change in circumstances regarding the reunification
 15 application, or regarding the unaccompanied alien child's circumstances, a new
 16 reunification application may be submitted that highlights the change(s) and explains
 17 why such changes should alter the initial decision. UACB Policy Guide § 2.7.8; Biswas
 18 Decl. ¶ 28. Similarly, if ORR discovers new information or becomes aware of a change
 19 in the circumstances of the potential sponsor and/or the unaccompanied alien child, ORR
 20 may assess the case anew. UACB Policy Guide § 2.7.8; Biswas Decl. ¶ 28.

21 **III. FACTUAL AND PROCEDURAL BACKGROUND**

22 As noted above, the minor Petitioner entered the United States as an
 23 unaccompanied alien child.

24 **Case Status for E.A.D.G.**

25 According to the information provided by the Department of Homeland Security
 26 Customs and Border Protection, E.A.D.G. was apprehended on March 4, 2026. Biswas
 27 Decl. ¶ 33. On the same day, E.A.D.G. was referred to ORR custody and admitted to
 28

1 Rancho San Antonio Boys Home (RSA) in Chatsworth, California.² *Id.* E.A.D.G. is 17
2 years old and turns 18 on August 28, 2026. *Id.* ¶34. Also, on March 4, 2026, the case
3 manager at RSA contacted the child's mother, who confirmed an interest in reunification
4 and scheduled a visit to see E.A.D.G. for March 7, 2026. *Id.* ¶ 35.

5 On March 6, 2026, H.Y.G.I. completed Part 1 of the sponsor application and
6 provided a copy of her identification, along with a selfie. *Id.* ¶ 36.

7 On March 9, 2026, the case manager provided technical assistance to H.Y.G.I. for
8 H.Y.G.I. to fix errors in Part 1 of her sponsor application. *Id.*

9 On March 10, 2026, H.Y.G.I. signed an Authorization for Release of Information
10 (ARI), and the case was forwarded to ORR's Division of Sponsor Administration
11 (DSA). *Id.* ¶ 37.

12 On March 19, 2026, ORR attempted to contact H.Y.G.I. but was unsuccessful. *Id.*
13 ¶ 38.

14 On March 20, 2026, ORR successfully made contact with H.Y.G.I. At that time,
15 she confirmed that she started her application and planned to follow-up with ORR on
16 March 23, 2026. *Id.* ¶ 38.

17 On March 23, 2026, H.Y.G.I. received technical assistance towards completing
18 her application, however, the potential sponsor was unable to complete it in its entirety.
19 *Id.* ¶ 39. The sponsor was unable to provide the necessary supporting documentation at
20 this time, which included the Authorization for Release of Information (ARI) and proof
21 of identity documents for all adult household members (HHM) and the ACG. *Id.*

22 On April 3, 2026, ORR reviewed H.Y.G.I.'s application and determined it needed
23 to be reopened due to a discrepancy in how her name was listed on the application
24 compared to how it appeared on her proof of identity documents. A sponsor assessment
25 was subsequently scheduled for April 7, 2026. *Id.* ¶ 40.

26
27 ² Petitioner asserts that RSA has been plagued by sexual misconduct from staff.
28 ORR takes allegations of sexual assault very seriously. UACs are detained separately
from the general population and to date, there have been no allegations of sexual assault
or misconduct involving the UACs that are detained there, including E.A.D.G.

1 On May 1, 2026, ORR attempted to contact H.Y.G.I. but was unsuccessful in
2 reaching her. At that time, Parts 2, 3, and 4 of the sponsor application remained
3 outstanding, as well as the following: proof of address (POA), proof of income (POI)
4 social security numbers(s) (SSN) or individual tax identification number(s) (ITIN), list
5 of household members (HHM) and/or alternate caregivers (ACG), identification (ID)
6 and authorizations for release of information (ARI). *Id.* ¶ 41.

7 On May 5, 2026, H.Y.G.I. reported that the five household members that she
8 resided with were unwilling to participate in the sponsorship assessment process.
9 H.Y.G.I. informed the case manager that she was considering moving, as a result.

10 On May 9, 2026, H.Y.G.I. confirmed that her situation had not changed. *Id.* ¶ 42.
11 Also, on May 9, 2026, ORR completed a sponsor assessment. *Id.* ¶ 43. This entails a
12 series of interview questions for the sponsor that reviews a sponsor's strengths,
13 resources, risk factors, and special concerns within the context of the child's needs,
14 strengths, risk factors, and relationship to the sponsor. *Id.*

15 Between May 14, 2026, and May 15, 2026, ORR made unsuccessful attempts to
16 contact H.Y.G.I. At that time, H.Y.G.I. still needed to provide Parts 2-4 of the sponsor
17 application and pending supporting documents including the ARI, IDs for all HHM, and
18 proof of ITIN and/or social security number (SSN) for herself, HHM, and the ACG, who
19 is her eldest son and E.A.D.G.'s older brother. *Id.* ¶ 44.

20 On May 20, 2026, ORR texted H.Y.G.I. to remind her of the upcoming May 26,
21 2026, deadline to complete her sponsor application. This deadline was established
22 because the application was open for a significant amount of time. At that time, H.Y.G.I.
23 reported that she had not completed the sponsor application because she planned to
24 move and sign a lease to her new residence on May 26, 2026. *Id.* ¶ 45.

25 Between May 23, 2026, and May 25, 2026, H.Y.G.I. provided updates and
26 reported that her move was delayed until May 31, 2026. *Id.* ¶ 46.

27 Between May 29, 2026, and May 31, 2026, H.Y.G.I. reported that she signed her
28 new lease and planned to move into her new residence on June 1, 2026. *Id.* ¶ 47.

1 On June 1, 2026, H.Y.G.I. confirmed that she moved and provided a statement
2 from the property manager confirming the same. *Id.* ¶ 48.

3 On June 15, 2026, H.Y.G.I. reported that she entered her new address in the
4 sponsor application; however, it was noted that her address did not include the apartment
5 number. At this time, H.Y.G.I. still needed to complete Parts 2-4 of the sponsorship
6 application and provide supporting documents. *Id.* ¶ 49.

7 On June 17, 2026, ORR reviewed H.Y.G.I.'s application and noticed multiple
8 incomplete uploads including the ACG's passport, E.A.D.G.'s birth certificate, POI,
9 H.Y.G.I.'s birth certificate, non-compliant ID, and an incomplete address history.
10 H.Y.G.I. confirmed her new address and reported plans for an ITIN appointment to
11 obtain an ITIN. *Id.* ¶ 50.

12 On June 23, 2026, ORR reopened the sponsor application for corrections and
13 missing documents. In Part 2 of her application, H.Y.G.I. incorrectly listed her address
14 and only provided the back of her ID. In Part 3 of the application, H.Y.G.I. failed to
15 upload the complete POI, POA, and ACG ID. H.Y.G.I. also reported that she scheduled
16 an ITIN appointment so that she and the ACG could obtain ITINs. *Id.* ¶ 51.

17 On June 27, 2026, H.Y.G.I. successfully uploaded a POI, prior school report, an
18 ID for the ACG, and her own birth certificate. Unfortunately, H.Y.G.I. unsuccessfully
19 uploaded an incomplete sponsor Passport and incomplete proof of address (lease
20 agreement). Additionally, Parts 2 and 3 of the sponsor's application were incomplete.
21 ORR contacted H.Y.G.I. and scheduled an appointment with H.Y.G.I. for June 29, 2026.
22 This June 29, 2026, appointment was ultimately rescheduled due to computer trouble;
23 however, H.Y.G.I. was able to upload a complete lease for her new residence and
24 provide foreign passports and consular IDs. *Id.* ¶ 52.

25 On July 1, 2026, H.Y.G.I. successfully uploaded both her and the ACG's
26 passports. At that time, the case was flagged for having non-compliant identity
27 documentation for both the potential sponsor and the ACG. *Id.* ¶ 53.

1 On July 2, 2026, ORR contacted H.Y.G.I. to assist her with the sponsorship
2 application but was unsuccessful in reaching her. *Id.* ¶ 54. On the same day, H.Y.G.I.
3 uploaded her proof of address (lease), and completed Part 3 of her sponsor application.
4 *Id.* On the same day, ORR sent H.Y.G.I. an email informing her of a new deadline of
5 July 7, 2026, to complete her application. ORR provided this notice to the sponsor in
6 writing of what was outstanding via a Notice to Cure. *Id.* At this time, Parts 2, 4 and
7 clarification regarding the ITINs of H.Y.G.I. and the ACG remained outstanding. *Id.*

8 On July 3, 2026, the case manager at RSA notified E.A.D.G. of the status of the
9 sponsor application as incomplete. *Id.* ¶ 55.

10 On July 6, 2026, ORR assisted H.Y.G.I. with Part 2 of the application, and the
11 potential sponsor provided a complete ARI. *Id.* ¶ 56. The potential sponsor also
12 completed Part 3, sections 5, 6 and 7 and an ARI link was generated for the ACG. *Id.*

13 On this same day, DSA scheduled a fingerprinting appointment for the next day,
14 July 7, 2026. *Id.* The potential sponsor also informed DSA that she still planned on
15 applying for her ITIN. *Id.* Part 3, sections 8, 9 and Part 4 were still pending at this time.
16 *Id.* ORR also contacted the potential sponsor's employer on this day for POI but was
17 unsuccessful and left a message. *Id.*

18 On July 7, 2026, the sponsor confirmed that the ACG received an ARI link and
19 that his ARI was pending completion. *Id.* ¶ 57. ORR also informed the sponsor that she
20 still needed to complete Part 3, sections 8, 9 and Part 4 of her application. *Id.* On that
21 same day, the potential sponsor's fingerprints were received, and she was cleared. *Id.*

22 On July 8, 2026, the potential sponsor provided school documents. On the same
23 day the ACG's ARI was reopened for clarification of his used aliases. *Id.* ¶ 58. The DSA
24 was unable to reach H.Y.G.I.'s contact for POI. *Id.*

25 On July 10, 2026, ORR assisted the ACG with the ARI and H.Y.G.I. with the
26 sponsor application. *Id.* ¶ 59. H.Y.G.I. completed the outstanding portions of the
27 application, Parts 3-4. The ACG completed his ARI on this same day, and his
28 fingerprinting appointment was scheduled for July 14, 2026. On this same day, consulate

1 verification for H.Y.G.I. and the ACG's birth certificate, passport and consular ID were
2 sent to the applicable consulate, and verification was received and uploaded the same
3 day. *Id.* On the same day, ORR made another attempt to contact H.Y.G.I.'s proof of
4 income contact without success. ORR then requested internet background checks for
5 H.Y.G.I. and the ACG, including public records and sex offender registry checks. *Id.*

6 On July 14, 2026, ORR uploaded the internet background check results for
7 H.Y.G.I. and the ACG. *Id.* ¶ 60. The background check revealed a domestic violence
8 incident in 2020. *Id.* The sex offender search revealed a site-level hit and one mile hit at
9 the apartment complex. *Id.* On that same day, a home study initiation email was sent to
10 the case manager, the case manager provided an update to E.A.D.G. and explained
11 timelines, and the ACG's fingerprints were received and cleared. *Id.* ORR also asked
12 H.Y.G.I. to obtain police reports regarding the 2020 domestic violence incident. *Id.*

13 On July 15, 2026, H.Y.G.I. reported that she attempted to obtain domestic
14 violence supporting documents, informed ORR that she requested a proof of income
15 letter from her employer. She was also informed that a home study would be initiated.
16 *Id.* ¶ 61.

17 On July 16, 2026, H.Y.G.I. reported that she was still gathering her proof of
18 income and domestic violence documents. *Id.* ¶ 62. On this same day, the potential
19 sponsor and ORR discussed the one-mile sex offender results. *Id.* ORR's expedited
20 home study request was also accepted. At this time, several documents remained
21 pending including the domestic violence documents, proof of income, and ITIN proof.
22 *Id.*

23 On July 20, 2026, H.Y.G.I. provided an updated yet incomplete employer letter
24 for POI (no signature, no contact number, incorrect address). *Id.* H.Y.G.I. reported that
25 she and the ACG would not be applying for ITINs due to delays. As a result, ORR noted
26 that a CAT 1 exemption from ITIN requirements would be necessary. *Id.* The
27 outstanding items from her application included updated proof of income, domestic
28 violence documents, an in-person ID verification check, DNA testing, and a Division of

1 Vetting (DOV) packet.³ *Id.* ¶ 63. ORR must schedule an appointment for DNA testing
2 and in-person ID check once the DOV packet is complete. *Id.*

3 On July 21, 2026, H.Y.G.I. requested a police report from the Los Angeles Police
4 Department. *Id.* ¶ 65.

5 On July 23, 2026, ORR contacted H.Y.G.I. to inform her that ORR was still
6 awaiting receipt of the police report for the 2022 domestic violence incident *Id.* ¶ 65.

7 As of today's date, the following sponsorship requirements remain outstanding: an
8 updated proof of income employment letter, a home study report, an in-person ID check,
9 DNA testing, and the DOV packet. CAT-1 exemptions are also necessary for both
10 H.Y.G.I. and the ACG for proof of identity due to a lack of ITINs. A home study is
11 expected to be completed on July 31, 2026. Upon receipt of the outstanding items, ORR
12 will promptly make its final sponsor suitability determination and release decision. *Id.* ¶
13 66.

14 **IV. ARGUMENT**

15 **A. Administrative Exhaustion Is Appropriate Here.**

16 Petitioner's habeas action is untimely where, as here, the sponsorship application
17 for E.A.D.G. is still incomplete. *See, e.g., Richmond v. Scibana*, 387 F.3d 602, 604 (7th
18 Cir. 2004) (discussing the "common-law exhaustion rule [that] applies to § 2241
19 actions"); *Baker v. Warden*, No. 23 C 50028, 2025 WL 1398979, at *3 (N.D. Ill. May
20 14, 2025) (petitioners "must exhaust their federal administrative remedies before seeking
21 habeas relief in court"). Still, when Congress has not imposed a statutory administrative
22 exhaustion requirement, "sound judicial discretion governs" whether exhaustion should
23

24 ³ The DOV conducts reviews of background check results and coordinates with
25 federal investigative partners to determine if there is an existing open criminal
26 investigation on sponsors. Based on information provided by federal law enforcement
27 partners, the DOV provides information and recommendations that inform the ultimate
28 sponsor suitability determination. *See* Field Guidance 24, ORR Division of Sponsor
Administration Role Guidance, available at:
https://acf.gov/sites/default/files/documents/orr/FG-24_ORR-Division-of-Sponsor-Administration-Role-Guidance.pdf. *See also* Biswas Decl. ¶ 63 and fn 3.

1 be required. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); *see also Gonzalez v.*
2 *O’Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004). The exhaustion doctrine both allows
3 agencies to apply their special expertise in interpreting relevant statutes and promotes
4 judicial efficiency. *Id.* But in making such an assessment, courts must balance the
5 individual and institutional interests involved, considering “the nature of the claim
6 presented and the characteristics of the particular administrative procedure provided.”
7 *McCarthy*, 503 U.S. at 146.

8 The general rule is that parties must exhaust “prescribed administrative remedies
9 before seeking relief from the federal courts.” *Id.* at 144-45. This case falls well within
10 this general rule because the sponsorship application for H.Y.G.I., E.A.D.G.’s potential
11 sponsor, remains pending and important vetting requirements (i.e. domestic violence
12 documents, updated proof of income employment letter, home study report, in person
13 identification check, DNA testing, Division of Vetting (DOV) report, and CAT-1
14 exemptions for both H.Y.G.I. and the alternate care giver, E.A.D.G.’s brother, for proof
15 of identity due to a lack of ITINs) have not yet been completed. *See Biswas Decl.* ¶ 64.

16 There are “two exceptions to the exhaustion requirement....First, exhaustion will
17 be excused when resort to such procedures would be futile, and second, the exhaustion
18 requirement is excused when a claimant is wrongfully denied meaningful access to
19 administrative procedures.” *Lieske v. Morlock*, 570 F. Supp. 1426, 1429 (N.D. Ill. 1983).
20 Neither of these exceptions apply. ORR is actively engaging with the potential sponsor
21 for E.A.D.G. and assisting her sponsorship process which remains ongoing. *See*
22 *generally Biswas Decl.* ¶¶ 47–63. Further, there is no allegation whatsoever that ORR is
23 preventing the potential sponsor for E.A.D.G. from completing outstanding sponsorship
24 requirements; in fact, the record shows that specialists met with the potential sponsor
25 H.Y.G.I. on multiple occasions to help her complete them. *Id.*; *see also Woodford v.*
26 *Ngo*, 548 U.S. 81, 90–91 (2006) (“Proper exhaustion demands compliance with an
27 agency’s deadlines and other critical procedural rules because no adjudicative system
28

1 can function effectively without imposing some orderly structure on the course of its
2 proceedings.”).

3 The statutory and regulatory framework described above contemplates a robust
4 administrative process to allow ORR to vet sponsorship applicants. *See supra* at 4-6, 8-
5 10. Bypassing that process entirely via habeas relief would directly undermine the
6 review-process that the HHS Secretary “shall, at a minimum, verif[y] the custodian's
7 identity and relationship to the child, if any, as well as [make] an independent finding
8 that the individual has not engaged in any activity that would indicate a potential risk to
9 the child.” 8 U.S.C. § 1232(c)(3)(A) (emphasis added). There is thus little reason why
10 exhaustion should not be required here.

11 **B. ORR’s Custody of Petitioner Is Required by Statute.**

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

21 In this case, the contrast is even more stark, as Petitioner entered the United States
22 designated as an unaccompanied alien child by DHS. Biswas Decl. ¶ 33. This means that
23 ORR took custody of E.A.D.G. under the HSA. And in that circumstance, the TVPRA
24 reinforces and expands upon the government’s responsibility for the care of UACs.
25 Unlike adults in the custody of other agencies, ORR cannot simply release a child in its
26 care on their own recognizance, or to just anyone who is willing to sponsor them. *See* 6
27 U.S.C. § 279(b)(2)(B). Rather, the TVPRA requires that ORR make a considered
28

1 decision about a child's placement based upon all the circumstances. *See* 8 U.S.C. §
 2 1232(c)(2)(A), (c)(3)(A).

3 As discussed above, the petition should fail because E.A.D.G.'s potential sponsor,
 4 H.Y.G.I., has a pending application with ORR to take custody of him so that ORR can
 5 make a considered decision of any kind. Biswas Decl. ¶ 663. Instead of going the direct
 6 route contemplated under the statute and regulations, they have attempted to short-circuit
 7 that process by going to district court and filing a habeas petition to have the Court make
 8 its own "best interests" determination. But considering that the sponsorship application
 9 for H.Y.G.I. is currently in the sponsor-assessment process and nearly complete, ORR's
 10 actions in this matter strictly follow the statutory requirements. As discussed above,
 11 ORR is prohibited from releasing Petitioner to a sponsor's custody until it makes "a
 12 determination that the proposed custodian is capable of providing for the child's physical
 13 and mental well-being." 8 U.S.C. § 1232(c)(3)(A). Accordingly, ORR is acting in
 14 accordance with the TVPRA's requirements, and the Petitioner should not be released to
 15 his potential sponsor, H.Y.G.I., unless and until ORR deems her suitable.⁴

16
 17 ⁴ Petitioner asserts without basis that ORR engaging in purported "dilatory tactics
 18 in holding children with parents present in the United States until they age-out into
 19 adulthood and can be transferred to DHS custody" which are "an impermissible end-run
 20 against" constitutional protections under the HSA. Pet. ¶ 86. To the contrary, ORR has
 21 continuously made documented efforts to assist H.Y.G.I. with completing the vetting
 22 process. Biswas Decl. ¶¶ 35-66.

23 Further, DHS may detain an 18-year-old only if the UAC poses a danger to self or
 24 others, and the youth's preferences must guide discharge planning. Under the TVPRA,
 25 DHS must make an age-out determination and consider placement of the UAC in the
 26 least restrictive setting available, after assessing danger to self, danger to the community,
 27 and flight risk. 8 U.S.C. § 1232(c)(2)(B).

28 ORR's authority to care for and house UACs ends when the UAC turns 18. 6
U.S.C. §§ 279(b)(1), (g)(2); *see also* Biswas Decl. ¶ 30. Except in very limited
 situations, ORR cannot continue using UAC funding once a UAC reaches age 18. *See*
 Biswas Decl. ¶ 30. Therefore, a post-18 plan is required for any UAC in ORR custody
 who will turn 18 within two weeks and may not qualify for release. *See id.* Care
 providers must notify the local DHS/Immigration and Customs Enforcement (ICE) Field
 Office Juvenile Coordinator (FOJC) that the UAC is aging out and obtain written
 confirmation of whether DHS/ICE will issue a Release on Own Recognizance. *See id.* ¶
 31, Case managers at ORR care provider facilities must adhere to ORR UACB Policy
 Guide, § 5.10.1.2 (Obtaining Authorization from the Subject of the Request) and share
 only basic demographic information from the Post-18 Plan with the ICE FOJC unless the
 (footnote cont'd on next page)

C. Nothing About ORR's Continued Care for Petitioner Violates the Fifth Amendment.

1. Procedural due process

Petitioner argues in her Second Claim for Relief that ORR's custody of E.A.D.G. constitutes a procedural due process violation because he has a liberty interest under the Due Process Clause, asserting that Respondents' policies and actions have deprived him of freedom from confinement without constitutionally sufficient due process and that his further detention bears no reasonable relation to a legitimate government purpose. Pet. ¶¶ 107-113. Petitioner's arguments are unavailing, however, because they are contrary to well-established precedent.

A procedural due process analysis typically considers the three factors articulated by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976). That framework requires consideration of the following factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

The first *Mathews* factor addresses "the private interest that will be affected by the official action." *Id.* at 334. Petitioners identify two constitutional interests: that of E.A.D.G. being free from custody and that of a right to family integrity or familial association between the child and his mother who sought to sponsor him. Pet. ¶ 138. Neither interest outweighs the remaining *Mathews* factors under the circumstances of these cases where the sponsorship application for E.A.D.G. remains pending, and the potential sponsor has yet to complete essential vetting requirements. Biswas Decl. ¶ 63-

child provides explicit consent. *See id.* ¶ 31. *See also* ORR UACB Policy Guide, § 5.10.2 (limiting information sharing with DHS).

64. Moreover, ORR is actively assisting the current potential sponsor, H.Y.G.I., in completing them.⁵ See generally Biswas Decl. ¶¶ 47-63.

As the Supreme Court has recognized, children “unlike adults, are always in some form of custody” and do not have “a right to come and go at will[.]” *Reno v. Flores*, 507 U.S. 292, 302 (1993) (quoting *Schall v. Martin*, 467 U.S. 253, 265 (1984)). As such, a UAC’s “interest in freedom from institutional restraints” may be subordinated to a state’s interest in the child’s welfare.” *Schall*, 467 U.S. at 265. Additionally, a parent’s interest in raising their child is “neither absolute nor unqualified.” *Martin v. St. Mary’s Dep’t of Soc. Servs.*, 346 F.3d 502, 506 (4th Cir. 2003); see also *D.B. v. Cardall*, 826 F.3d 721, 741 (4th Cir. 2016) (“[A]lthough ‘the interest of parents in the care, custody, and control of their children’ has been recognized as a ‘fundamental liberty interest[],’” *Troxel v. Granville*, 530 U.S. 57, 65 (2000), that right is qualified, and in most cases, “the constitutionality of state actions that interfere with family integrity depends on the adequacy of the procedures available to contest them.”). That interest must give way to the state’s responsibility to investigate circumstances that could lead to neglect and abuse, as required by the TVPRA for ORR. See 8 U.S.C. § 1232(c)(3)(A) (prohibiting ORR from releasing a child to a sponsor unless ORR makes an affirmative determination “that the proposed custodian is capable of providing for the child’s physical and mental well-being”) (emphasis added).

⁵ In accordance with the ORR policy, “ORR reviews the cases of all pending sponsor applications for UACs in ORR custody for 90 days. The purpose of the review is to identify and resolve the reasons that a sponsor application remains pending in a timely manner. Upon completion of the review, case managers will update the sponsor and unaccompanied alien child on the status of the case, highlighting the reasons that the sponsorship process is incomplete. [T]he case manager will work with the sponsor, relevant stakeholders, and the ORR or Federal Field Specialist (FFS) on a plan to address portions of the application that remain incomplete...” UACB Policy Guide, §2.7.9, available at: <https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2#2.7.9> (Rev. August 8, 2025). Cases that are not resolved after the initial 90-day review period, are provided with additional 90-day periods until the pending sponsor application is resolved in accordance with ORR policy. *Id.*; see also 45 C.F.R. § 410.1207.

1 The second *Mathews* factor looks to “the risk of an erroneous deprivation of such
 2 interest through the procedures used,” as well as whether further or different process
 3 would lead to a more accurate resolution. *Mathews*, 424 U.S. at 335. Notably, in a 2022
 4 decision on cross summary judgment motions in the *Lucas R* litigation, a class action
 5 challenging certain ORR policies and practices relating to the care and custody of
 6 unaccompanied alien children, including the sufficiency of procedural protections
 7 governing children’s release to sponsors, the court found that due process does not
 8 require ORR to determine that a sponsor who is a parent or close relative is suitable by a
 9 clear and convincing evidentiary standard. *Lucas R v. Becerra*, No. CV 18-5741-DMG
 10 (PLAx), 2022 WL 2177454, *28 (C.D. Cal. Mar. 11, 2022).

11 As the *Lucas R* court recognized, “[d]ue process does not demand that the Court
 12 impose procedures that shift the burden to ORR to prove that the sponsor is unfit.” *Id.*
 13 Instead, acknowledging unique interests and challenges in the immigration context and
 14 the broad statutory discretion provided to ORR by the TVPRA for conducting the
 15 mandated suitability determinations to ensure safe releases of UACs to potential
 16 sponsors, the court stated that, “a minor’s rights are adequately protected so long as the
 17 minor and sponsor have the opportunity to appeal a denial and submit additional
 18 evidence of a sponsor’s fitness, if necessary.” *Id.*; 8 U.S.C. § 1232(c)(3)(A). The court
 19 found that ORR’s then-existing hearing policies that at the time applied only to UAC
 20 with parent or legal guardian sponsors “provide the fundamental hallmarks of due
 21 process, including review by a neutral factfinder who is not involved in the original
 22 denial.” *See Lucas R*, 2022 WL 2177454, at *26.⁶ The court only added that the notice
 23

24 ⁶ On August 30, 2022, in alignment with its partial summary judgment decision,
 25 the *Lucas R* court issued a preliminary injunction ordering ORR to extend its notice and
 26 appeal processes in the ORR Policy Guide which were previously afforded only to
 27 denied sponsors who are parents and legal guardians to close relatives (but not distant
 28 relatives or non-relatives), among other changes to its policies regarding release of
 children to sponsors. *See Lucas R*, 2022 WL 3908829, at *1; *cf. J.E.C.M. by and*
Through His Next Friend Saravia v. Marcos, 689 F.Supp.3d 180, 195 (E.D. Va. 2023).
 ORR incorporated those notice and appeal processes in its Foundational Rule. *See* 45
CFR §§ 410.1205, 1206.

1 must inform denied potential sponsors that they are entitled to be represented by counsel
2 (at no cost to the Government). *Id.* Notably absent from the *Lucas R* court’s reasoning,
3 however, was any mention of a requirement that due process demands a pre-
4 determination hearing before a sponsorship decision is ever made. *Id.* Here, ORR has
5 continuously worked with E.A.D.G.’s mother to help her complete her application
6 thereby completing the vetting requirements. Biswas Decl. ¶ 47. H.Y.G.I.’s sponsorship
7 application is still pending, and as a result, ORR has not made a final decision whether it
8 is safe to release E.A.D.G. to her. Biswas Decl. ¶ 63-64.

9 Petitioner has likewise not made any showing of unreasonable delay. The record
10 demonstrates that ORR has continuously engaged with H.Y.G.I. regarding additional
11 required information for sponsoring her son, E.A.D.G., and other necessary steps. *See*
12 *generally id.* at ¶¶ 30-63.

13 Critically, as the court in *JECM* explained, “[t]he potential exploitation of [UACs]
14 by sponsors underscores the strong interest that ORR has in ensuring the safe release of
15 children in its care.” 689 F.Supp.3d 180, 199 (E.D. Va. 2023) (discussing evidence of
16 incidents such as the trafficking of UACs by their assigned sponsors in Marion, Ohio
17 and a New York Times investigation that supported legitimate governmental concern
18 regarding mistreatment of UAC where children released by ORR across the country had
19 taken dangerous jobs in factories, which had in some cases been encouraged or even
20 required by sponsors).

21 In sum, an application of the *Mathews* factors to the specific circumstances of
22 Petitioner’s case demonstrates that ORR has not violated his or his potential sponsors’
23 procedural due process rights.

24 **2. Substantive due process**

25 In the Third Claim for Relief, Petitioner asserts a violation of the substantive
26 component of the Due Process Clause, arguing that ORR’s continued care of E.A.D.G.
27 infringes on him and his mother’s liberty interest in family integrity and association. Pet.
28 ¶¶ 114–120. “Substantive due process is far narrower in scope than procedural due

1 process” and requires Petitioner to show not only that he was deprived of a
2 constitutionally protected interest, “but also that the action causing the deprivation falls
3 so far beyond the outer limits of legitimate governmental action that no process could
4 cure the deficiency.” *J.E.C.M. by and Through His Next Friend Saravia v. Lloyd*, 352
5 F.Supp.3d 559, 586 (E.D. Va. 2018) (citing *Plyler v. Moore*, 200 F.3d 365, 374 (4th
6 Circ. 1996)) (emphasis, internal quotation marks, and citations omitted in the original)
7 (holding that unaccompanied alien child plaintiffs failed to state a substantive due
8 process claim where they alleged that ORR’s policies and procedures made it
9 increasingly difficult for children to be released from ORR’s care and custody).
10 Petitioner simply cannot make that requisite showing here.

11 As discussed above, any constitutional liberty interest that the Petitioner’s mother
12 has in raising him is “neither absolute nor unqualified,” and ORR has countervailing
13 interests in protecting him from risk of harm upon release, as required by the TVPRA.
14 *JECM*, 352 F.Supp.3d at 587–88 (citing *Martin*, 346 F.3d at 506) (internal quotation
15 marks omitted); 8 U.S.C. § 1232(c)(3)(A). Thus, “the constitutionality of state actions
16 that interfere with family integrity depends on the adequacy of the procedures available
17 to contest those actions.” *Id.* at 588 (citing *D.B.*, 826 F.3d at 741) (internal quotation
18 marks omitted). As shown above, ORR has put in place ample due process procedures in
19 its regulations and policy which enable denied potential sponsors who are parents to
20 contest ORR’s release decisions. Here, however, E.A.D.G.’s mother, H.Y.G.I., is still in
21 the process of completing her sponsor application. Biswas Decl. ¶ 32-64.

22 Further, to demonstrate that governmental conduct “shocks the conscience,”
23 “[Petitioner] must allege conduct that is ‘patently egregious’ or ‘outrageous,’ that
24 ‘violates the decencies of civilized conduct,’ or that fails to ‘comport with traditional
25 ideas of fair play and decency.’” *J.E.C.M.*, 352 F.Supp.3d at 586-87 (citing *County of*
26 *Sacramento v. Lewis*, 523 U.S. 833, 846–49 (1998)) (internal quotation marks and
27 citations omitted in the original). Moreover, “[t]o be sufficiently egregious, the official
28 conduct must do more than produce a harmful or unfortunate result . . . rather, the

conduct must be so out of step with contemporary norms and comparable governmental practices that no decent society can tolerate it.” *Id.* (citation omitted). Under the circumstances here, where H.Y.G.I. failed to provide all the required information and documentation, *see* Biswas Decl. ¶ 63; vetting requirements for H.Y.G.I. are still pending, *see id.* ¶ 63; and ORR has actively assisted H.Y.G.I. in completing sponsorship requirements, *see generally id.* ¶¶ 47-63, ORR’s conduct cannot be said to “shock the conscience.” *See D.B.*, 826 F.3d at 741 (“[W]hen a state’s interference with parental control is predicated on a determination that the parent is unable to provide adequate care for a child, such interference does not contravene substantive due process, at least in the absence of governmental action that shocks the conscience”). Thus, Petitioner’s substantive due process challenge is unavailing.

D. Petitioner’s TVPRA Claim Fails.

In his First Claim for Relief, Petitioner asserts that ORR violated the TVPRA’s requirement that E.A.D.G, as a UAC, be placed in “the least restrictive setting that is in his best interests. Pet. ¶¶ 116-124. The TVPRA does not provide a standalone cause of action because it does not contain an express waiver of the government’s sovereign immunity, and the government has not otherwise consented to suit under that statute. *See* 8 U.S.C. § 1232; *Lane v. Pena*, 518 U.S. 187, 192 (1996); *cf. Adams v. Calhoun Cty.*, No. 18-1867, 2019 WL 3501815, at *2 (6th Cir. 2019) (no waiver of state sovereign immunity); *Mjsilovic v. Okla. Ex rel. Bd. of Regents for Univ. of Okla.*, 841 F.3d 1129, 1132–34 (10th Cir. 2016) (same). Accordingly, any claim that ORR has violated the TVPRA must be evaluated under the APA (§ 706(2)(A)) as a claim that the agency action was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” *See Lucas R.*, 2018 WL 7200716, at *7 n.12.

Section 704 of the APA provides for judicial review of “[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court.” 5 U.S.C. § 704. Here, however, where no statute makes ORR’s preliminary sponsor vetting efforts reviewable, the sponsor application for the potential

1 sponsor of E.A.D.G., H.Y.G.I., is being processed, essential vetting requirements are still
 2 pending, and ORR has not made its final agency decision regarding the suitability of the
 3 potential sponsor and the safety of releasing Petitioner to her, judicial review of such a
 4 claim under the APA is not available. Biswas Decl. ¶ 47-63.

5 Further, Section 706(1) of the APA permits a reviewing court to “compel agency
 6 action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).⁷ The Supreme
 7 Court has held that a claim under 5 U.S.C. § 706(1) can only proceed where the plaintiff
 8 asserts that an agency failed to take a discrete action that the agency is required to take.
 9 *See Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 64 (2004). Accordingly,
 10 an agency’s purported delay in acting cannot be unreasonable with respect to action that
 11 is not required. *See id.* Here, the TVPRA mandates that ORR release a child only to a
 12 sponsor that ORR, in its child welfare experience and judgment, determines will safely
 13 care for the UAC. 8 U.S.C. § 1232(c)(3)(A).⁸ ORR is actively engaged with the potential

14 ⁷While Petitioner does not cite § 706(1), that is the section applicable to claims
 15 based on delay.

16 ⁸ Petitioner also argues that Respondents failed to timely process the sponsorship
 17 application for H.Y.G.I. in accordance with Foundational Rule requirements. *See, e.g.*,
 18 Pet. at ¶ 56. This assertion has no merit. Under the *Accardi* doctrine, a court may set
 19 aside agency action that is not in compliance with its own regulations or internal
 20 procedures. *See Leslie v. Att’y Gen. of U.S.*, 611 F.3d 171, 175 (3d Cir. 2010). But not
 21 every agency regulation or procedure falls under the doctrine. Rather, to state a claim for
 22 an *Accardi* violation, Petitioners must plausibly allege that a regulation or procedure
 23 “regulate[s] the rights and interests of others” and thus is “controlling upon the agency.”
 24 *Id.* (citing *Columbia Broad. Sys., Inc. v. United States*, 316 U.S. 407, 422 (1942)); *see*
United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 268 (1954). When an agency
 regulation “does not protect fundamental constitutional or statutory rights,” a violation of
 the regulation will only warrant judicial relief when there is “a showing of prejudice.”
Leslie, 611 F.3d at 178 (citing *Chong v. INS*, 264 F.3d 378, 389 (3d Cir. 2001)).

25 ORR has followed applicable laws, policies, and regulations in processing each of
 26 the sponsorship applications. These included laws requiring ORR to consider the safety
 27 and suitability of any placement. Notably, 45 C.F.R. § 410.1205(b), cited by Petitioner
 28 (*see* Pet. ¶ 56) refers to adjudication of a “completed” sponsorship application. The
 record reflects that the pending applications for the potential sponsor of E.A.D.G. is not
 yet complete, and important vetting requirements remains pending. Biswas Decl. ¶ 63.

(footnote cont’d on next page)

1 sponsor, H.Y.G.I., in the ongoing sponsorship process but has not yet made the
2 determination whether the Petitioner may safely be released. Biswas Decl. ¶ 66. Upon
3 receipt of the outstanding items, ORR will promptly make its final sponsor suitability
4 determination and release decision. *Id.*

5 Petitioner also misleadingly asserts that ORR failed to schedule H.Y.G.I. for
6 fingerprints within the requisite three (3) days after she submitted the necessary
7 documents and instead took 116 days, thereby prolonging Petitioner's detention
8 unnecessarily. Pet. at ¶ 103. In accordance with ORR policy, the "case manager will
9 schedule a fingerprint appointment to occur within (3) three business days of receiving
10 the individual's completed Authorization for Release of Information (ARI) and valid
11 form of identification." UACB Policy Guide, § 2.5. Here, H.Y.G.I. only provided a
12 complete ARI on July 6, 2026, and a fingerprinting appointment was scheduled for the
13 following day, July 7, 2026. Biswas Decl. ¶ 57. Similarly, once the ACG's ARI was
14 completed on July 10, 2026, his fingerprinting appointment was scheduled shortly
15 thereafter on July 14, 2026. Biswas Decl. ¶ 59.

16 17 **VI. Conclusion**

18 For the foregoing reasons, Respondents respectfully request that the Petition be
19 denied.

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25 Upon receipt of the updated background check results, ORR will promptly make its final
26 sponsor suitability determination and release decision. *Id.*

27 Petitioner does not specifically assert a claim under *Accardi*, but any such claim
28 would fail because the remedy for an *Accardi* violation would be "limited to compelling
the agency to abide by" the regulation, which it has done here, not to order release.
C.G.B. v. Wolf, 464 F. Supp. 3d 174, 227 n.44 (D.D.C. 2020).

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