UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

I.E.T.P., a minor, by and through Next Friend, A.R.T.P.,

Petitioner,

-against-

MARKWAYNE MULLIN, in his official capacity as Secretary of the U.S. Department of Homeland Security, TODD BLANCHE, in his official capacity as Acting Attorney General of the United States; ROBERT F. KENNEDY, JR. in his official capacity as Secretary of Health and Human Services; ANGIE SALAZAR, in her official capacity as Acting Director of the Office of Refugee Resettlement; MARIANA VALDEZ in her official capacity as Office of Refugee Resettlement Federal Field Specialist; JUSTINE CHRISTAKOS in her official capacity as Chief Executive Officer of Abbott House; U.S. Department of Homeland Security; U.S. Immigration and Customs Enforcement; U.S. Department of Health and Human Services; U.S. Office of Refugee Resettlement,

Respondents.

Case No. 26 CV 6490 (MKV)

RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO THE VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR INJUNCTIVE RELIEF

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Respondents (the "government"), by their attorney, James M. McDonald, United States Attorney for the Southern District of New York, respectfully submit this memorandum of law in opposition to the petition for a writ of habeas corpus (ECF No. 1) ("Pet."), filed on July 29, 2026, by petitioner I.E.T.P. ("Petitioner")

PRELIMINARY STATEMENT

Petitioner is a minor who is in the care of the Office of Refugee Resettlement ("ORR"), an entity within the Administration for Children and Families, a division of the U.S. Department of Health and Human Services ("HHS"). In December 2025, Petitioner was apprehended near the United States-Mexico border, Dkt. No. 1-1, ¶ 9, and, as an unaccompanied minor, was transferred into ORR custody. *See* Declaration of Elizabeth Kronk ("Kronk Decl.") ¶ 30.[1] Petitioner identified his adult brother, A.R.T.P., as a potential "sponsor" to take custody of him. Kronk Decl. ¶ 31. After being contacted by ORR, A.R.T.P. agreed to sponsor Petitioner. Since then, ORR and A.R.T.P. have been working through the extensive mandatory sponsorship assessment process which, by statute, regulation and agency policy, ORR must complete before Petitioner can be released. This process is nearly complete. What remains is the preparation of a report by the Division of Vetting, determining whether the sponsor is subject to a pending or active criminal investigation. Kronk Decl. ¶ 41. This step must be completed before ORR can determine A.R.T.P's suitability. *See* Kronk Decl. ¶¶ 31, 60.

[1] Petitioner improperly names the U.S. Department of Homeland Security ("DHS") and its component agency the U.S. Immigration and Customs Enforcement ("ICE"), as well DHS's Secretary (Markwayne Mullin) and the Attorney General of the United States (Todd Blanche), as parties in this matter. DHS, ICE, and DOJ are not responsible for the care and custody of Petitioner.

LEGAL FRAMEWORK

A. Statutory and Regulatory Background

In 2002, Congress enacted the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135 (codified in relevant part at 6 U.S.C. § 279), abolishing the Immigration and Naturalization Service ("INS") and transferring the responsibility for the care and placement of Unaccompanied Alien Children ("UAC") 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 UAC 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). These responsibilities are carried out through cooperative agreements and contracts with care providers under ORR policies and oversight. *See* 6 U.S.C. § 279(b)(1); 31 U.S.C. § 6305.

Congress enacted the Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA") in 2008 to strengthen protections for UAC and support their safe repatriation or appropriate placement. Pub. L. No. 110-457. The statute, consistent with the HSA, makes the Secretary of HHS responsible for the care and custody of UACs. 8 U.S.C. § 1232(b)(1). Pursuant to the TVPRA, "any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an

unaccompanied alien child." 8 U.S.C. § 1232(b)(3). Further, ORR has no ability to refuse a referral when the referring federal agency transfers custody to it of an individual that the other agency has determined to be a UAC. *See generally* 8 U.S.C. § 1232(b); Kronk Decl. ¶ 6.

The TVPRA also states that HHS, and other agencies, "shall establish policies and programs to ensure that unaccompanied alien children in the United States are protected from traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity." 8 U.S.C. § 1232(c)(1). It also provides that UAC "may not be placed with a person or entity unless the Secretary of Health and Human Services makes a determination that the proposed custodian is capable of providing for the child's physical and mental well-being." 8 U.S.C. § 1232(c)(3)(A); Kronk Decl. ¶ 11. 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.* Thus, the TVPRA is explicit that ORR must prioritize the safety and well-being of UAC while in its care and upon release.

B. The Unaccompanied Children Program Foundational Rule

In April 2024, ORR promulgated the Unaccompanied Children Program Foundational Rule (the "Rule"), codified at 45 C.F.R. Part 410, to establish comprehensive regulations governing its UAC program consistent with its statutory responsibilities. The Foundational Rule also implements provisions of the *Flores* Settlement Agreement.[2]

[2] The *Flores* Settlement Agreement is a consent decree entered into by the former INS governing the apprehension, process, and care and custody of alien minors in its custody. *See Flores v. Garland*, No. 85 Civ. 4544, 2024 WL 3467715, at *9 (C.D. Cal. June 28, 2024). Notably, Paragraph 24B cited by Petitioner, *see* Pet. ¶ 90, is no longer in effect. And Petitioner is placed in a non-restrictive shelter setting, *see* Kronk Decl. ¶ 30 n.2, which is no longer governed by the settlement agreement. Regardless, ORR incorporated the *Flores* Settlement Agreement's

Specifically, the Rule provides that ORR must release UAC from its custody "[s]ubject to an assessment of sponsor suitability," 45 C.F.R. § 410.1201, a process which starts with an "application package" that "[p]otential sponsors shall complete." 45 C.F.R. § 410.1202(a). The assessment of sponsor suitability includes "review of the potential sponsor's application package, including verification of the potential sponsor's identity, physical environment of the sponsor's home, and relationship to the unaccompanied child, if any, and an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the unaccompanied child." *Id.* § 410.1202(b). The Rule reinforces congressional intent articulated in the HSA and TVPRA that HHS ensure UAC protection from human traffickers and release UAC only to those sponsors capable of protecting their well-being. 45 C.F.R. § 410.1003; *see* Kronk Decl. ¶¶ 15-16.

Moreover, the Rule requires ORR to consider the UAC's "current functioning and strengths in conjunction with any risks or concerns," including history or risk of being a victim of sex or labor trafficking and history of involvement in the criminal or juvenile justice system. 45 C.F.R. § 410.1202(f); *see* Kronk Decl. ¶ 13.

C. ORR's Release to Sponsor Policies and Practices

To carry out its statutory and regulatory mandate under the HSA and TVPRA, and the Foundational Rule, ORR has developed policies and procedures for identifying and conducting suitability assessments of potential sponsors. These procedures are generally set out in ORR's publicly available UACB Bureau Policy Guide ("UACB Policy Guide").[3]

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requirement that children be released to sponsors "without unnecessary delay" into the Foundational Rule. 45 C.F.R. § 410.1200. As discussed below, *see infra* __, ORR is following its own regulations and policies in vetting A.R.T.P.'s sponsorship application.

[3] *See* UACB Policy Guide, available at https://perma.cc/Q2C3-3SC5 (last visited August 13, 2026); *see also* Kronk Decl. ¶¶ 14–18 (discussing the relevant UACB Policy Guide Sections).

A full assessment of a potential sponsor's suitability is particularly appropriate because ORR is not a law or immigration enforcement agency and lacks the authority to hold individuals accountable by reassuming care if the sponsor abuses or neglects a child after a UAC has been released from ORR custody. Kronk Decl. ¶ 14. Rather, ORR only takes children into its custody upon referral by another federal agency, as described in 8 U.S.C. § 1232(b). *Id.* ¶¶ 6-7. In this regard, ORR is also very different from state child welfare agencies, which typically retain such authority post-placement. *Id.* ¶ 14. Accordingly, ORR must front-load child safety considerations in its identity verification and sponsor vetting policies. *Id.* In light of ORR's obligation to protect UAC from smugglers, traffickers, and others who may seek to victimize them, "safe and timely release . . . involves several steps, including: the identification of sponsors; sponsor application; interviews; the assessment (evaluation) of sponsor suitability, including verification of the sponsor's identity and relationship to the child (if any), background checks, and in some cases home studies; and post-release planning." UACB Policy Guide § 2.1.

ORR conducts suitability assessments of any potential sponsor (with the assistance of a care provider), including a review of the potential sponsor's strengths, resources, risk factors, and special concerns within the context of each child's needs, strengths, risk factors, and relationship to the sponsor. *Id.* §§ 2.2.2, 2.4. A potential sponsor must complete a sponsorship application package, provide unexpired government-issued identification documentation for the sponsor and any other adults living in the household or identified in a sponsor care plan, and, along with any adult living in his or her household, undergo a background check. *Id.* §§ 2.2.4, 2.5. All potential sponsors must also submit proof of address, income, sponsor-child relationship, individual taxpayer identification number or social security number, and criminal history documents (if applicable). *Id.* § 2.2.4. Additionally, in certain circumstances, a home study,

which consists of interviews, a home visit, and a written report containing the home-study case worker's findings, is performed. *Id.* § 2.4.2.

F. The One, Big, Beautiful Bill Act ("OBBA") Section 87001

Concerned about the past abuses of the sponsorship program, ORR's release policies regarding background checks were effectively ratified by Congress in July 2025. In Section 87001, OBBA lists information that ORR "shall" review when determining appropriateness of release using appropriated funds:

- "the name of the potential sponsor and of all adult residents of the potential sponsor's household";
- "the social security number or taxpayer identification number of the potential sponsor and of all adult residents of the potential sponsor's household";
- "the date of birth of the potential sponsor and of all adult residents of the potential sponsor's household";
- "the validated location of the residence at which the unaccompanied alien child will be placed";
- "an in-person or virtual interview with, and suitability study concerning, the potential sponsor and all adult residents of the potential sponsor's household";
- "contact information for the potential sponsor and for all adult residents of the potential sponsor's household"; and,
- "the results of all background and criminal records checks for the potential sponsor and for all adult residents of the potential sponsor's household, which shall include, at a minimum, an investigation of the public records sex offender registry, a public records background check, and a national criminal history check based on fingerprints."

OBBBA, Public Law 119-21, 139 Stat. 72, § 87001(1)(A)-(G) (July 4, 2025); *see also* Kronk Decl. ¶ 17. These requirements ensure that ORR's obligation to undertake a full assessment of each potential sponsor's suitability is completed before ORR releases the child from its custody.

BACKGROUND

A. Factual Background

Petitioner was apprehended upon entry to the United States on December 19, 2025, along the Mexico-United States Border, Kronk Decl. ¶ 30; Pet. ¶ 8, and transferred to the care of ORR the following day, Kronk Decl. ¶ 30. ORR placed Petitioner at Lincoln Hall Boys Haven in Lincolndale, New York, on December 21.[4] *Id.*

- **December 23, 2025:** Petitioner's case manager contacts A.R.T.P., who Petitioner had identified as a potential sponsor, to assess his willingness to participate in the sponsorship process. *Id.* ¶ 31. A.R.T.P. agrees, indicating that he would obtain required information (*e.g.*, an identification document and taxpayer identification number) and would confirm the willingness of household members to participate in vetting procedures. *Id.*

- **December 26, 2025:** A.R.T.P. reports that he has no qualifying identity documents, no social security or taxpayer identification number, and that household members were unwilling to participate in the vetting process. *Id.* ¶ 32. A.R.T.P. states that he intends to apply for necessary documentation, relocate to a new residence, and provide an emergency contact person. *Id.*

- **December 29, 2025:** A.R.T.P. reports his continuing efforts to complete the sponsorship application, to locate an alternate caregiver, as well as to obtain identity documents and a taxpayer identification number. *Id.* ¶ 33. He reiterates his intent to move to a new residence and stated that he had not been able to identify an alternate caregiver. The case manager submits a new sponsor referral to ORR two days later. *Id.* ¶ 34.

- **January 5, 2026:** A.R.T.P. reports applying for a New York City ID, scheduling an appointment to obtain an ITINa taxpayer number, and continuing to search for an alternate caregiver. *Id.* ¶ 35.

- **January 7, 2026:** although he obtains an acceptable identity document, A.R.T.P. withdraws his sponsor application because household members remain unwilling to engage in vetting process. *Id.* ¶¶ 36-37. A.R.T.P. states his intent to reapply after moving to a new residence. *Id.* ORR reiterated that the sponsor would need to provide the information for all household members so that required background checks could be completed. *Id.* ¶ 37.

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[4] Since April 22, 2026, Petitioner has resided at Abbot House Shelter, located in Irvington, New York, where he remains today. Kronk Decl. ¶ 44 n.2. Further, contrary to Petitioner's representations, *see* Pet. ¶ 2, ORR has no current plans to transfer Petitioner out of New York to Texas (or any other state) unless warranted by specific circumstances, such as medical emergencies or security concerns, consistent with 45 C.F.R. § 410.1601. *Id.* Any assertion to the contrary is false. *Id.*

- **January 17, 2026:** The care provider facilitated an in-person visit between A.R.T.P. and I.E.T.P. *Id.* ¶ 38.

- **January 30, 2026:** A.R.T.P. submits proof of a new apartment lease. *Id.* A new sponsor referral is initiated. *Id.* ¶ 39.

- **March 15, 2026:** After two unanswered call attempts, the assigned field specialist begins vetting A.R.T.P.'s application. *Id.* ¶ 40. ORR reviewed the sponsor application process, the required steps in vetting the sponsor and alternate caregiver and reviewed the documentation they would need to produce. *Id.* The sponsor confirmed his willingness to comply with the sponsor application process and confirmed his identity as I.E.T.P.'s brother. *Id.* The sponsor reported obtaining a New York City ID, and applied for a driver's license and taxpayer identification number and was informed it would be received within 5-7 weeks. *Id.* He agreed to submit his ID and ITIN application receipt to begin vetting. *Id.* The sponsor did not have an identified alternate caregiver and reported that he had relocated because his previous household members were unwilling to participate in the vetting process. *Id.*

- **March 18, 2026:** The care provider facilitated an in-person visit between A.R.T.P. and I.E.T.P. *Id.* ¶ 41.

- **March 17-April 14, 2026:** A.R.T.P. works on completing the sponsor application packet, obtaining a taxpayer number, and identifying alternate care givers. *Id.* ¶ 42. During this time, the sponsor reported to the case manager that he was unable to access the application and was unable to reach the Federal Field Specialist (FFS) due to FFS travel and leave.

- **April 20, 2026:** the FFS closes the sponsorship application because essential items remained incomplete. *Id.* ¶ 43. A.R.T.P. is provided a new authorization for release of information (ARI) to restart the process. *Id.*

- **May 2-May 9, 2026:** On May 2, ORR clarified that the online application was cancelled because A.R.T.P. had not yet received a taxpayer identification number (ITIN). *Id.* ¶ 45. A.R.T.P. confirmed that he applied for an ITIN and would submit proof of doing so. A few days later, on May 9, the sponsorship application was officially closed pending receipt of taxpayer number. *Id.* A.R.T.P. agrees to notify ORR once the number is obtained. *Id.*

- **May 15-29, 2026:** A.R.T.P. creates a new application, completes a new authorization for release of information, provides some documentation, and corrects deficiencies noted in the prior application while continuing to collect supporting documentation. *Id.* ¶ 46.

- **June 3, 2026:** A.R.T.P. received his taxpayer identification number, allowing sponsorship processing to resume. He submitted an incomplete authorization for release of information and proof of income, with additional required documents outstanding. *Id.* ¶ 47.

- **June 9-10, 2026:** A.R.T.P. submits the sponsor application, a new authorization for release of information, birth certificates, proof of address, and proof of income. *Id.* ¶ 48. But outstanding requirements include information concerning the alternative care giver.

Unfinished vetting steps include DNA testing, a home study, a Division of Vetting Report, and in-person identification verification. *Id.*[5]

- **June 11-17, 2026:** A.R.T.P. completes fingerprinting, with results later returning clear. *Id.* ¶ 49. Proof of familial relationship is completed. *Id.* ¶ 50. An internet background check is started. *Id.* The case manager confirms that A.R.T.P. has submitted a taxpayer identification number to ORR. *Id.* But information remains missing. On June 16, A.R.T.P. is reminded that the alternative care giver must provide an authorization for release of information and submit other documentation. *Id.*

- **June 30-July 15, 2026:** A.R.T.P. provides missing alternative care giver information, *i.e.*, on June 30, information release authorization; on July 13, identity document and social security/taxpayer number. *Id.* ¶¶ 51, 52. The alternative care giver's internet background check is completed on July 15. *Id.* ¶ 52.

- **July 18-July 20, 2026:** A.R.T.P. is contacted regarding the pending fingerprint appointment and agrees to coordinate scheduling. *Id.* ¶ 53. He coordinates an appointment for the alternate caregiver. *Id.*

- **July 22-July 28, 2026:** The alternate caregiver attends the scheduled fingerprinting appointment, but still cannot locate a second acceptable ID, prompting ORR to review alternative forms of identification. *Id.* ¶ 54.

- **July 30-31, 2026:** ORR completes a sponsor assessment summarizing the case history, including A.R.T.P.'s residence relocation, receipt of a taxpayer number, and identification of an alternative care giver. *Id.* ¶ 55. ORR refers the case for expedited home study, in-person ID verification, and DNA testing. *Id.* The alternative care giver is fingerprinted on July 31 to conduct a background check. *Id.* .

- **August 1-6, 2026**: A home study is performed on August 1, with positive report provided to ORR on August 3. *Id.* ¶ 57. On August 6, ORR receives a fingerprint-based background check report identifying no red flags for the alternative care giver. *Id.* ¶ 56. A.R.T.P. attends an in-person identification check and provides a sample for DNA testing on August 6. *Id.* ¶ 58. Because A.R.T.P. provides only one check stub as proof of income, he is told to complete an affidavit of support to provide further proof of income. *Id.*

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[5] The Division of Vetting reviews the results of background checks and coordinates with federal investigative partners to determine if there is an existing open criminal investigation on sponsors, alternative care givers, or household members, including those which would not appear on the fingerprint-based checks. Based on information provided by federal law enforcement partners, the Division of Vetting provides information and recommendations that inform the ultimate sponsor suitability determination. *See* ORR Field Guidance No. 24 at 14, available at https://acf.gov/sites/default/files/documents/orr/FG-24_ORR-Division-of-Sponsor-Administration-Role-Guidance.pdf; *see also* Kronk Decl. ¶ 48.

- **August 11, 2026:** A.R.T.P. provides the affidavit of support to ORR. *Id.* ¶ 59. ORR receives DNA testing results establishing a biological relationship between A.R.T.P. and Petitioner.

As of today, only the Division of Vetting report remains pending. *Id.* ¶ 60. ORR expects to receive the report by August 18. *Id.* Upon receipt, ORR will promptly make its final sponsor suitability determination and release decision. *Id.*

B. Petitioner's Habeas Petition

On July 29, 2026, Petitioner, through A.R.T.P., filed this habeas petition. Petitioner alleges that his continuing detention violates his due process rights (Count I); the TVPRA and the INA (Count II); the Administrative Procedure Act (Count III); the *Accardi* doctrine, the Foundation Rule and the ORR Policy Guide (Count IV); and the *Flores* Settlement Agreement (Count IV). The Petition principally requests that the Court order Petitioner's immediate release to the "custody and care" of A.R.T.P., Pet., Prayer for Relief, at 31; or in the alternative, grant Petitioners release on bail, pending a full adjudication under *Mapp v. Reno*, (Count V). With the Petition, Petitioner also filed a motion for a temporary restraining order and preliminary injunction, directing that he be released into the custody of A.R.T.P. Dkt. No. 2.

ARGUMENT

The Petition presents various legal arguments, all of which ultimately amount to an assertion that the ORR's sponsor vetting process has been overly prolonged. But ORR has lawful custody over the Petitioner and is working diligently to determine Petitioner's release to a safe environment.

A. Administrative Exhaustion Is Appropriate Here

Petitioner should be required to complete the administrative process before seeking habeas relief. "A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention." *Michalski v. Decker*, 279 F. Supp. 3d 487, 495 (S.D.N.Y.

2018). "While § 2241 does not include a statutory exhaustion requirement, district courts in this Circuit have recognized such a requirement as a prudential matter before immigration detention may be challenged in federal court by a writ of habeas corpus." *Id.* (collecting habeas cases involving a pending BIA appeal of a bond determination that imposed a prudential exhaustion requirement); *but see Maldonado v. Lloyd*, No. 18 Civ. 3089 (JFK), 2018 WL 2089348, at *10 (S.D.N.Y. May 4, 2018) (finding that the petitioner raised "substantial constitutional question" under the Fifth Amendment and therefore "the Court will not require exhaustion").

Where the exhaustion requirement is "judicially imposed instead of statutorily imposed," courts excuse a party's failure to exhaust administrative remedies when, *inter alia*: "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003). However, "[e]xhaustion is the rule, waiver the exception." *Abbey v. Sullivan*, 978 F.2d 37, 44 (2d Cir. 1992). To assess whether exhaustion is required, courts must balance the individual and institutional interests involved, considering "the nature of the claim presented and the characteristics of the particular administrative procedure provided." *McCarthy v. Madigan*, 503 U.S. 140, 146 (1992).

This case falls within the general rule requiring exhaustion because A.R.T.P.'s sponsorship application remains pending, with an important vetting requirement, the Division of Vetting report, not yet completed. *See* Kronk Decl. ¶ 51. ORR has actively engaged with A.R.T.P. throughout the process to facilitate completion of his application. *See generally* Kronk Decl. ¶¶ 31-51. Further, there is no allegation that ORR is preventing A.R.T.P. from completing

outstanding sponsorship requirements; rather, ORR staff have met with A.R.T.P. on multiple occasions to help him complete them.

The statutory and regulatory framework described above contemplates a robust administrative process to allow ORR to vet sponsorship applicants. Granting habeas relief directly undermines the review process that HHS must complete. 8 U.S.C. § 1232(c)(3)(A) (HHS "shall, at a minimum, verif[y] the custodian's identity and relationship to the child, if any, as well as [make] an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child.") There is thus no reason why exhaustion should not be required here.

B. The Government's Ongoing Care for Petitioner Does Not Violate His Procedural or Substantive Due Process Rights

Petitioner argues that remaining in ORR's custody violates his procedural and substantive due process rights. *See* Pet. ¶¶ 67-74. That is not correct.

"In procedural due process claims, the deprivation by state action of a constitutionally protected interest in 'life, liberty, or property' is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest without due process of law." *Zinermon v. Burch*, 494 U.S. 113, 125 (1990). To determine what procedural due process requires, courts consider: (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." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Applying this framework to the case at hand, it is clear that the current procedures do not violate Petitioner's procedural due process rights.

As to the first *Mathews* factor, Petitioner identifies two constitutional interests: that of his being free from custody and that of a right to family integrity or familial association between himself and his adult brother. Pet. ¶¶ 3, 71. Petitioner's interests, however, are limited by his status as both a minor and an alien. *See Diego N. et al., v. U.S. Dep't of Health and Human Serv., et al.*, No. 26 Civ. 0577 (CJN), 2026 WL 1179706, at *4 (D.D.C. Apr. 30, 2026); *see also Reno v. Flores*, 507 U.S. 292, 302 (1993) ("Juveniles, unlike adults, are always in some form of custody, and where the custody of the parent or legal guardian fails, the government may . . . either exercise custody itself or appoint someone else to do so.") (internal quotations and citation omitted); *Mathews v. Diaz*, 426 U.S. 67, 79–80 (1976) ("In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens."). A.R.T.P.'s interests are further limited in that he has yet to complete essential vetting requirements. Kronk Decl. ¶ 51. These limited interests do not outweigh the remaining *Mathews* factors under the circumstances of this case.

As to the second *Mathews* factor, ORR's procedures do not create a risk of erroneous deprivation of liberty interests because they are designed to release Petitioner to his sponsor as soon as ORR can be assured that such release is safe and in Petitioner's best interests. By requesting immediate release through this action, Petitioner seeks to bypass ORR's process for assessing issues of safety and the child's best interest. *See Diego N.*, 2026 WL 1179706, at *6 ("The Government is, of course, already providing process of a kind; indeed, Plaintiffs' concern is that the Government is engaged in too much process, and thus that the re-vetting process is taking too long."); *but see E.H.C.F. v. Kennedy*, No. 25 Civ. 2142 (VDO), 2026 WL 145229, at *12 (D. Conn. Jan. 16, 2026) (finding risk of erroneous deprivation to family integrity and due process violation).

As to the third *Mathews* factor, the Government has a strong interest in protecting the welfare of UACs, as expressed through the provisions of the TVPRA. *See Santosky v. Kramer*, 455 U.S. 745, 766 (1982) ("[T]he State has an urgent interest in the welfare of the child . . .") (citation and internal quotation marks omitted); *Maldonado*, 2018 WL 2089348, at *10 ("The most obvious Government interests here are protecting the welfare of children and the safety of the public."). The TVPRA mandates vetting, not automatic release. The least restrictive setting must also be "in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). The TVPRA prohibits ORR from releasing a child to a proposed custodian unless ORR first "makes a determination that the proposed custodian is capable of providing for the child's physical and mental well-being," which "shall, at a minimum, include verification of the custodian's identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child." 8 U.S.C. § 1232(c)(3)(A); *see* Kronk Decl. ¶ 11. Thus, these vetting procedures serve an important government interest that cannot be set aside without creating a risk to the safety of UACs, and do not constitute an unconstitutional infringement on the UAC's qualified liberty. 45 C.F.R. § 410.1202(b).

Here, any delay is attributable to the necessary vetting process which is intended to protect the interests of UACs such as Petitioners. Kronk Decl. ¶ 14. Moreover, much of the delay has been caused by A.R.T.P.'s inability to provide required documentation – *e.g.*, the sponsor must prove his or her identity, which A.R.T.P. was unable to do for several weeks; all adults living in the sponsor's household must be vetted, something which A.R.T.P. could not provide for weeks until he moved to a new residence; the sponsor must identify another adult alternative care giver, which A.R.T.P. did not provide ORR for months. ORR requires this information to

conduct background checks on adults responsible for the UAC. These delays pushed back completion of other steps – *e.g.*, a home study, background check of the adult alternative care giver, Division of Vetting report, DNA testing of A.R.T.P. – which ORR did not undertake while so many other, more basic parts of the sponsorship application remained incomplete.

Thus, although A.R.T.P.'s sponsorship application has been pending since he reinstituted it on January 30, 2026, that application was not completed until July 31, 2026. At that time, ORR acted swiftly, within 11 days obtaining DNA testing, performing a home study, fingerprinting the adult alternative care giver, and performing an in-person identification check of A.R.T.P. Upon receipt of the Division of Vetting report, expected by August 18, the federal field specialist assigned to A.R.T.P.'s application will make the final sponsor suitability recommendation under 45 C.F.R. § 410.1202.

Petitioner's substantive due process claim similarly lacks merit. The scope of the substantive due process analysis required by Supreme Court jurisprudence is extremely narrow, and Petitioner carries a significant burden to demonstrate that ORR's policies run afoul of the same. As the Supreme Court has repeatedly explained, substantive due process only "prevents the government from engaging in conduct that shocks the conscience . . . or interferes with rights implicit in the concept of ordered liberty." *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 847 (1998) (quoting *United States v. Salerno*, 481 U.S. 739, 746 (1987)). In cases challenging executive action, the threshold question is whether the challenged conduct was "so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *Lewis*, 523 U.S. at 847 n.8. The facts here do not approach this standard; indeed, ORR is engaged in a release process that is meant to protect Petitioners' well-being, not harm it.

C. Petitioner's Continued Detention in ORR Custody Does Not Violate the *Flores* Settlement Agreement

Petitioner argues that his continued detention in ORR custody violates the *Flores* Settlement Agreement because that agreement requires that a minor be released "without unnecessary delay" to a parent, legal guardian or other qualified sponsor. Pet. ¶ 90. This argument is unavailing for two reasons. *First*, this settlement agreement has been mostly terminated as to HHS. *See Flores v. Garland*, No. Civ. 854544-DMG (GRx), 2024 WL 3467715, at *9 (C.D. Cali. June 28, 2024) (conditionally and partially terminating the FSA as to HHS on the basis of ORR's publication of regulations implementing the Agreement). The few remaining paragraphs of the FSA that still apply to HHS do not pertain to the ORR release processes (*e.g.*, the sponsor vetting processes).

Second, Petitioner has failed to show that the government violated any provision of the *Flores* Settlement Agreement. The agreement provides that "where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others, the INS shall release a minor from its custody without unnecessary delay . . . to a parent;" *Flores v. Lynch*, 828 F.3d 898, 903 (9th Cir. 2016). However, the FSA also provides that:

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

Flores v. Reno, No. 85-4544 (C.D. Cal. Jan. 17, 1997), Dkt. No. 110, ¶ 17. Thus, the requirement that ORR must release the petitioner "without delay" must be read with reference to ORR's

responsibility for conducting a suitability assessment.[6] Part of that suitability assessment includes vetting the sponsor, which ORR is currently in the process of doing. Any delay in releasing Petitioner from ORR custody is not "undue" as it has been the result of ORR's ongoing suitability assessment. *See* Kronk Decl. ¶¶ 31-60 (describing steps that ORR has taken to evaluate sponsor's application).

D. Petitioner's Administrative Procedure Act, TVPRA, Foundational Rule and *Accardi* Doctrine Claims Fail

Petitioner's claims based on the Administrative Procedure Act ("APA"), the TVPRA, the Foundational Rule and the *Accardi* doctrine lack merit. Pet. ¶¶ 75-88.

The APA permits judicial review of agency action only when, *inter alia*, "there is no other adequate remedy in a court." 5 U.S.C. § 704. Where a noncitizen's claim for relief "'necessarily imply the invalidity' of their confinement," those claims "must be brought in habeas" and not as APA claims. *See Trump v. J. G. G.*, 604 U.S. 670, 672 (2025).

Moreover, Section 706(1) of the APA permits a reviewing court to "compel agency action" only where it has been "unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). The Supreme Court has held that a claim under 5 U.S.C. § 706(1) can only proceed where the plaintiff asserts that an agency failed to take a discrete action that the agency is required to take. *Norton v. S. Utah Wilderness All*, 542 U.S. 55, 64 (2004). Accordingly, an agency's purported delay in acting cannot be unreasonable with respect to action that is not required. *See id.* Here, the TVPRA mandates that ORR release a child only to a sponsor that

[6] The *Flores* Settlement Agreement language concerning release "without unnecessary delay" is currently codified in ORR regulations at 45 C.F.R. § 410.1200 and 1201(a). But as mentioned above and discussed here, ORR also has a statutory and regulatory duty to appropriately vet potential sponsors for UAC, including potential sponsors who are parents or legal guardians.

ORR, in its child welfare experience and judgment, determines will safely care for the UAC. 8 U.S.C. § 1232(c)(3). That determination has not yet been made.

Additionally, Petitioner claims that under the Unaccompanied Children Program Foundational Rule, ORR has impermissibly delayed making a suitability determination, Pet. ¶ 98, and therefore violated the *Accardi* doctrine. To state a claim for an *Accardi* violation, Petitioners must plausibly allege that a regulation or procedure "regulate[s] the rights and interests of others" and thus is "controlling upon the agency." *Leslie v. Att'y Gen. of U.S.*, 611 F.3d 171, 175 (3d Cir. 2010) (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. Dist. Dir., I.N.S.*, 264 F.3d 378, 389 (3d Cir. 2001)).

Here, ORR has followed applicable laws, policies, and regulations (including the Foundational Rule) in processing A.R.T.P.'s sponsorship application. These included laws requiring ORR to consider the safety and suitability of any placement. Notably, 45 C.F.R. § 410.1205(b), cited by Petitioner (*see* Pet. ¶ 86) refers to adjudication of a "completed" sponsorship application. The record reflects that A.R.T.P.'s sponsorship application, without the Division of Vetting report, is incomplete. Upon receipt of the report, which is expected by August 18, 2026, ORR will promptly make its final sponsor suitability determination and release decision. Thus, any *Accardi* claim fails because the remedy for an *Accardi* violation is "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).

Further, Petitioner asserts that ORR violated the TVPRA's requirement that Petitioner, as a UAC, be placed in "the least restrictive setting that is in his best interests. Pet. ¶¶ 75-79. But 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. v. Azar*, No. 18 CV 185741, 2018 WL 7200716, at *7 (C.D. Cal. Dec. 27, 2018). As explained above, such an APA claims fails because the sponsor application remains pending with the Division of Vetting report not having been completed. Kronk Decl. ¶ 60. Thus, Petitioner's TVPRA claim fails.

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In short, ORR has been working diligently to complete the sponsorship assessment process for Petitioner's sponsor. The Court should allow that process, which is designed to protect the Petitioner, to be completed.

E. Petitioner's Emergency Motion for a Temporary Restraining Order Should be Denied

To obtain a TRO, Petitioner must show (1) likelihood of success on the merits of his habeas claim; (2) likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance of the equities tips in his favor; and (4) that an injunction is in the public interest. Martinez v. Joyce, No. 25 Civ. 10376 (GBD), 2025 WL 3641539, at *2 (S.D.N.Y. Dec. 16,

2025) (citing *Basank v. Decker*, 449 F. Supp. 3d 205, 210 (S.D.N.Y. 2020)). "Where the Government is the opposing party, the final two factors in the temporary restraining order analysis – the balance of the equities and the public interest – merge." *Hernandez Aguilar v. Decker*, 482 F. Supp. 3d 139, 150 (S.D.N.Y. 2020). A temporary restraining order is "an extraordinary remedy never awarded as of right." *Bragg v. Jordan*, 669 F. Supp. 3d 257, 267 (S.D.N.Y. 2023) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)). Indeed, "a TRO, perhaps even more so than a preliminary injunction . . . should not be granted unless the movant, by a clear showing, carries the burden of persuasion.'" *Free Country Ltd v. Drennen*, 235 F. Supp. 3d 559, 565 (S.D.N.Y. 2016).

The motion should be denied. First, Petitioner is requesting the ultimate relief being sought in the Petition – release into A.R.T.P.'s custody. But "[t]he purpose of a preliminary injunction is not to give the [petitioner] the ultimate relief it seeks." *WarnerVision Ent. Inc. v. Empire of Carolina, Inc.*, 101 F.3d 259, 261 (2d Cir. 1996). In bringing this motion, Petitioner improperly asks this Court to completely alter the status quo by granting him the very relief he hopes to obtain through this action. *See, e.g., Powell v. Fannie Mae*, 16 CV 1359, 2017 WL 712915, at *2 (S.D.N.Y. Feb. 2, 2017) (R&R) (injunctive relief "is improper where it would give the plaintiff substantially all the ultimate relief [he] seeks").

Indeed, when a Petitioner "seeks a preliminary injunction that either alters the status quo or would provide the ultimate relief sought in the underlying action" a heightened preliminary injunction standard applies. *Tom Doherty Assocs., Inc. v. Saban Ent., Inc.*, 60 F.3d 27, 33–34 (2d Cir. 1995). Under this heightened preliminary injunction standard, "the movant must show a clear or substantial likelihood of success on the merits, and make a strong showing of irreparable

harm in addition to showing that the preliminary injunction is in the public interest." *New York ex rel. Schneiderman v. Actavis PLC*, 787 F.3d 638, 650 (2d Cir. 2015).

Moreover, where, as here, a petitioner seeks release as both preliminary and permanent injunctive relief and asserts the same basis for both, the Court need not determine whether the petitioner is entitled to a preliminary injunction, because the Court can and should decide the case on the merits and deny the claims contained in the petition pursuant to Fed. R. Civ. P. 65(a)(2), thereby mooting the petitioner's motion for preliminary relief.

In any event, Petitioner does not meet the heightened standard for the mandatory injunctive relief he seeks. As outlined above, Petitioner cannot establish a likelihood of success on the merits, let alone that the law and facts clearly favor his position, because he was provided with adequate process. And the delays Petitioner faults are the result of ORR conscientiously applying – not violating – laws and policies for vetting sponsorship applications.

Further, the issuance of an injunction is not in the public interest. There is a strong public interest in preventing continued constitutional violations. However, where, as here, Petitioner cannot establish that such violations exist, that public interest dissipates. And there is a strong public interest in ensuring that UACs health, welfare and safety interests are secured by fully vetting sponsorship applications.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the petition for a writ of habeas corpus.

Dated: New York, New York
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Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules and the Court's Individual Practices. As measured by the word processing system used to prepare it, this memorandum contains 6,928 words.