UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LAUREN FOUDA, the next of friend of two minor children, E.X. and P.X., Petitioners, v. ANGIE SALAZAR, et al., Respondents.	No. 26 Civ. 6559 (AS)

RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO THE PETITION FOR A WRIT OF HABEAS CORPUS

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Respondents (the "Government") respectfully submit this memorandum of law in response to the order to show cause dated July 31, 2026, ECF Nos. 3-1; 7, and in opposition to the Petition for a writ of habeas corpus, ECF No. 1 (the "Petition" or "Pet."), filed on behalf of Petitioners EX. and P.X. ("Petitioners").

PRELIMINARY STATEMENT

Petitioners are biological siblings in the care of the Office of Refugee Resettlement ("ORR"), an entity within the Administration for Children and Families ("ACF"), a division of the U.S. Department of Health and Human Services ("HHS"). Petitioners were transferred into ORR custody on February 1, 2026, as unaccompanied minors. On February 3, 2026, Petitioners' mother, L.S.G.D., who was already in the United States, applied to be a "sponsor" to take custody of Petitioners. Since that time, ORR has been conducting the sponsorship assessment process, which is required to be completed before ORR can release Petitioners. On August 4, 2026, an addendum home study report was completed, resulting in a positive home study recommendation. On August 6, 2026, the federal field specialist assigned to the sponsor's application made their final sponsor suitability recommendation under 45 C.F.R. § 410.1202, and ORR is currently determining whether release of E.X. or P.X. would present a risk to either the UACs, the sponsor, the household, or the community under 45 C.F.R. § 410.1205.

LEGAL BACKGROUND

The statutory and regulatory framework governing the federal care and custody of Unaccompanied Alien Children ("UACs"), as well as their release and sponsorship, reflects congressional intent for ORR to "mak[e] placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status" that ensure UACs "are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity." 6 U.S.C. § 279(b)(1)(C), (b)(2)(A)(ii). That

framework balances the mandate that ORR protect UACs from harm with the requirement that ORR "promptly" place UACs "in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A).

The Homeland Security Act of 2002 ("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."[1] 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 protecting them from smugglers, traffickers, and others who might seek to victimize and exploit UACs. 6 U.S.C. § 279(b)(1)(A), (b)(2)(A)(ii). ORR's goal is to release UACs to suitable sponsors where consistent with its statutory mandate to ensure that placement does not result in danger to UACs, to the community, or risk of flight by any UAC. *See* Decl. of Elizabeth Kronk ("Kronk Decl.") ¶ 9; *see also* 6 U.S.C. § 279(b)(1), (b)(2)(A)(ii); 8 U.S.C. § 1232(c)(1), (c)(3)(A).

The Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), which incorporates the HSA definition of a UAC, 8 U.S.C. § 1232(g), and prohibits HHS from releasing a child to a proposed custodian unless HHS first "makes a determination that the proposed custodian is capable of providing for the child's physical and mental well-being," which "shall, at a minimum, include verification of the custodian's identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would

[1] This determination is made at the time of border apprehension by other federal agencies and departments that encounter these children and have initial custody of them. *See generally* 8 U.S.C. § 1232(b)(2), (3).

indicate a potential risk to the child." 8 U.S.C. § 1232(c)(3)(A). In addition, under its regulations, which implement the *Flores* Settlement Agreement[2] ("FSA"), ORR assesses all potential sponsors (even when the potential sponsor is a child's parent) before making any release determination, including a review of the potential sponsor's strengths, resources, risk factors, and relationship to the UAC. Kronk Decl. ¶ 12; *see also, e.g.,* 45 C.F.R. §§ 410.1201(a), 1202(b) and (c), 1205.

The process for release of a UAC from ORR custody involves several steps, including: the identification of sponsors; sponsor application; interviews; the assessment of sponsor suitability, including verification of the sponsor's identity and relationship to the child (if any), background checks, in some cases home studies; and post-release planning. Kronk Decl. ¶ 15; *see also* 45 C.F.R. part 410, subpart C. Under ORR sub-regulatory guidance, there are several categories of potential sponsors: (1) Category 1, consisting of parents or legal guardians; (2) Category 2, consisting of siblings, half-siblings, grandparents, or immediate relatives (such as aunts, uncles, and cousins), and other biological relatives and relatives through marriage; and (3) Category 3, consisting of other sponsors, such as distant relatives and unrelated adult individuals. *See* Kronk Decl. ¶ 15; ORR UACB Policy Guide ("UACB Policy Guide"), § 2.2.1, *available at* https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide.

A potential sponsor must complete a sponsorship application package to be considered as a sponsor. Kronk Decl. ¶ 16; 45 C.F.R. § 410.1202. The sponsor must provide unexpired

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[2] The *Flores* Settlement Agreement is a consent decree entered into by the former Immigration and Naturalization Service ("INS") governing the apprehension, process, and care and custody of alien minors in its custody. The Department of Homeland Security and HHS are successor agencies to the former INS with respect to various parts of the FSA. However, the FSA has been mostly terminated as to HHS. *See Flores v. Garland*, No. 85 Civ. 4544, (DMG) (AGRx) 2024 WL 3467715, at *9 (C.D. Cal. June 28, 2024) (conditionally and partially terminating the FSA as to HHS on the basis of ORR's publication of regulations implementing the 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).

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 background checks. Kronk Decl. ¶ 16; UACB Policy Guide §§ 2.2.4, 2.5. Potential sponsors must also submit proof of address, income, sponsor-child relationship, and criminal history documents (if applicable). Kronk Decl. ¶ 16; UACB Policy Guide § 2.2.4. ORR does not disqualify potential sponsors based solely on their immigration status or for law enforcement purposes. Kronk Decl. ¶ 16; UACB Policy Guide § 2.6.

ORR conducts a suitability assessment of the potential sponsor, including a review of the 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. Kronk Decl. ¶ 18; 45 C.F.R. § 410.1202. Additionally, in certain circumstances a home study is performed, which consists of interviews, a home visit, and a written report containing the home-study case worker's findings. *Id.* ¶ 18; 45 C.F.R. § 410.1204; UACB Policy Guide § 2.4.2.

The TVPRA provides ORR with the authority to conduct home studies, and states: "A home study *shall* be conducted for a child who is a victim of a severe form of trafficking in persons, a special needs child with a disability (as defined in Section 12102 of Title 42), a child who has been a victim of physical or sexual abuse under circumstances that indicate that the child's health or welfare has been significantly harmed or threatened, or a child whose proposed sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence." Kronk Decl. ¶ 19; 8 U.S.C. § 1232(c)(3)(B) (emphasis added); *see also* 45 C.F.R. § 410.1204(b)(1).

Additionally, per 45 C.F.R. § 410.1204(b)(2)&(3), ORR requires a home study "[b]efore releasing any child to a non-relative sponsor who is seeking to sponsor multiple children, or who

has previously sponsored or sought to sponsor a child and is seeking to sponsor additional children. Kronk Decl. ¶ 19. ORR also requires a home study "[b]efore releasing any child who is 12 years old or younger to a non-relative sponsor." Kronk Decl. ¶ 20.

Under 45 C.F.R. § 410.1204(c), ORR may also initiate home studies if it determines that a home study is likely to provide additional information which could assist in determining that the potential sponsor is able to care for the health, safety, and well-being of the child. Kronk Decl. ¶ 21.

Home studies are conducted to "[a]ssess the potential sponsor's ability to meet the child's needs[,]" "[e]ducate and prepare the potential sponsor for the child's release; and" "[c]orroborate information gathered on the sponsor's assessment." Kronk Decl. ¶ 22. The home study ultimately results in "a written report containing the home study case worker's findings." *Id.*; UACB Policy Guide § 2.4.2.

Home studies are generally conducted in person and a written home study report must be submitted within 10 business days of the home study referral. Kronk Decl. ¶ 23. The written home study report "must present a comprehensive and detailed assessment of the sponsor's ability to care for the needs of the child and identify any information that emerges regarding the sponsor, the sponsor's household or the child." *Id.* Additionally, "[t]he home study report may identify areas where additional services, resources, or information are needed to support a successful sponsorship." While the home study provider submits a written report, ORR retains the final decision authority on release decisions. *Id.*; UACB Policy Guide § 2.4.2.

Once the assessment of the potential sponsor is complete, the care provider makes a release recommendation. Kronk Decl. ¶ 24; UACB Policy Guide § 2.7. The recommendation must take into consideration all relevant information, including the report and recommendations from a home

study, if conducted, laws governing the process, and other facts in the case. Kronk Decl. ¶ 24. ORR makes the final release decision. *Id.*; UACB Policy Guide § 2.7. Release decisions include: (1) approve release to sponsor; (2) approve release with post-release services; (3) conduct a home study before a final release decision; (4) deny release; or (5) remand for further information. Kronk Decl. ¶ 24; UACB Policy Guide § 2.7. In general, ORR denies release if: (1) the potential sponsor is not willing or able to provide for the child's physical or mental well-being; (2) the potential sponsor is not willing to complete the mandatory fingerprint check; (3) the physical environment of the home presents a risk to the child's safety or well-being; or (4) release of the UAC would present a risk to him or herself, the sponsor, household, or community. Kronk Decl. ¶ 25; UACB Policy Guide § 2.7.4; 45 C.F.R. § 410.1205.

FACTUAL BACKGROUND

Petitioners E.X. and P.X. are biological siblings. Kronk Decl. ¶¶ 32-34. On February 1, 2026, U.S Customs and Border Protection apprehended Petitioners at the U.S. Southern Border near Lukeville, Arizona, and transferred Petitioners into ORR custody as UAC. *Id.* ¶ 35. On February 2, 2026, ORR placed Petitioners at Rising Ground Therapeutic Foster Care ("Rising Ground TFC") in Yonkers, New York. *Id.* ¶ 36.

On February 3, 2026, ORR identified L.S.G.D., the biological mother of E.X. and P.X., as a potential Category 1 sponsor, and began the vetting process for potential release of Petitioners to LS.G.D. *Id.* ¶ ¶ 37, 38. On that date, ORR determined that therapeutic foster care was the least restrictive setting appropriate for E.X. and P.X. *Id.* ¶ 38.

On February 4, 2026, E.X. disclosed to a clinician at Rising Ground TFC, that she had been [redacted] which was documented in a Child Level Event Report. *Id.* ¶ 38. The report states that on February 4, 2026, E.X. disclosed that she, ". . . [redacted] [redacted] *Id.* E.X. stated that [redacted]

[redacted] until she left Guatemala in 2025. *Id.* On February 5, 2026, a Rising Ground TFC clinician was informed by E.X.'s foster parent that EX. disclosed that she had [redacted] which E.X. described as [redacted] *Id.* ¶ 39. Further, the foster parent reported that E.X. stated she was planning to [redacted] This was documented in a Child Level Event. *Id.*

On March 18, 2026, L.S.G.D. applied to be a Category 1 Sponsor. *Id.* ¶ 40. L.S.G.D. submitted the required sponsor application and authorization of release of information to ORR. *Id.* ¶ 41. Between March 23, 2026, and March 30, 2026, L.S.G.D. provided ORR with a copy of her passport, bank statements, and a self-employment declaration. *Id.* ¶ 41. On the sponsorship application, L.S.G.D. identified an address in Pawtucket, Rhode Island, as the residence where she would live with E.X. and P.X. *Id.* ¶ 43. L.S.G.D. further provided on the sponsorship application that she lived at her current address with: V.V., a 24 year old female family friend, and F.A.L.M., a 22 year old male, who was identified as simply "unrelated." *Id.* ¶ 42.

On April 8, 2026, Rising Ground TFC ceased operations. *Id.* ¶ 43. As a result. E.X. and P.X. were transferred to Abbott House Therapeutic Foster Care, located in Bronx, New York. *Id.* On April 13, 2026, ORR received fingerprinting results for L.S.G.D., which did not reveal any issues preventing sponsorship. *Id.* ¶ 44. The case was then referred for a home study on April 18, 2026. *Id.* The home study was required as part of L.S.G.D.'s sponsor vetting due to due to E.X.'s disclosure on February 4, 2026, that she was [redacted]. *Id.*; *See* 8 U.S.C. § 1232(c)(3)(B); 45 C.F.R. § 410.1204(b)(1)(iii).

On April 26 ,2026, the home visit was conducted. *Id.* ¶ 45. The report noted that the home contained three bedrooms and one bathroom. *Id.* During the home study visit, L.S.G.D. stated that she occupied one of the bedrooms, V.V. occupied one of the bedrooms, and V.V.'s son, G.L.V.,

occupied the third and final bedroom. *Id.* G.L.V.'s presence in the home was not mentioned in the sponsor application package. *Id.*

On May 1, 2026, ORR completed a written home study assessment, and found, several deficiencies. *Id.* ¶ 46. First, during the home study assessment, V.V. stated that in addition to G.L.V., two of her other sons reside at the home on a part-time basis. *Id.* ¶ 47. L.S.G.D. did not disclose that G.L.V. resided at the home prior to the home study visit. *Id.* Men's shoes were observed in the home. *Id.* L.S.G.D. stated that they belonged to V.V.'s ex-partner, but he no longer resided there. *Id.* The report noted that "these inconsistencies raised concerns regarding the accuracy and completeness of the reported household composition." *Id.* Second, L.S.G.D. exhibited a "lack of awareness" regarding E.X.'s "prior disclosures related to abuse." *Id.* ¶ 48. Third, the home study case worker from Morrison Kids, an ORR-contracted provider, observed "an item resembling a disassembled lower receiver of a semi-automatic firearm" during the home study. *Id.* ¶ 49. At the time of the home study assessment, V.V. initially denied the presence of firearms in the home. *Id.* ¶ 49. Fourth, L.S.G.D. identified a bedroom under construction, and without furniture and beds as the bedroom of E.X. and P.X. *Id.* ¶ 50. Fifth, smoke alarms were absent in key areas of the home, including sleeping areas and common areas. *Id.* ¶ 51. Due to these deficiencies, the home study resulted in a negative recommendation. *Id.* ¶ 52.

On or about May 5, 2026, L.S.G.D. conveyed to ORR that she was looking to move into a new home. This was documented in a case management weekly report. *Id.* ¶ 53. On May 14, 2026, ORR obtained DNA testing results that confirmed the biological relationship between E.X., P.X., and L.S.G.D. *Id.* ¶ 54. On June 7, 2026, L.S.G.D. submitted to ORR a copy of a lease agreement for an apartment located in Central Falls, Rhode Island. *Id.* ¶ 55. The lease was and dated June 2, 2026, and listed L.S.G.D., E.X., and P.X. as the tenants. *Id.*

On June 21, 2026, ORR ordered a home study report addendum due to L.S.G.D.'s change in address, which was completed on August 4, 2026, and resulted in a positive home study recommendation. *Id.* ¶ 57 The positive home study report will be used as part of the basis for ORR's release determination. *Id.*

On August 6, 2026, the federal field specialist assigned to the sponsor's application made their final sponsor suitability recommendation under 45 C.F.R. § 410.1202. *Id.* ¶ 58. ORR is currently determining whether release of E.X. or P.X. would present a risk to either the UACs, the sponsor, the household, or the community under 45 C.F.R. § 410.1205. *Id.*

On July 31, 2026, Petitioners, by their next friend, Lauren Fouda, commenced this action. The Petition principally requests that the Court order Petitioners immediately released to the "care of their mother and proposed sponsor," or in the alternative, grant Petitioners release on bail, pending a full adjudication under *Mapp v. Reno*. Pet. at V, Prayer for Relief.

ARGUMENT

THE PETITION SHOULD BE DENIED

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

I. ORR's Custody of Petitioners Is Lawful

At the outset, this case is fundamentally different from a typical *habeas* petition because "juveniles, unlike adults, are always in some form of custody." *Reno v. Flores*, 507 U.S. 292, 302 (1993) (quotations omitted). Accordingly, "where the custody of the parent or legal guardian fails," the Supreme Court has held that the "government may (indeed, we have said *must*) either exercise custody itself or appoint someone else to do so." *Id.* The Director of ORR is vested by statute with

functions under the immigration laws of the United States with respect to the care of UACs, including among other things responsibility for coordinating and implementing the care and placement of UACs who are in federal custody by reason of their immigration status. *See* 6 U.S.C. § 279(a), (b)(1)(A). Unlike adults in the custody of other agencies, ORR cannot simply release children in its care on their own recognizance. 6 U.S.C. § 279(b)(2)(B). Instead, the TVPRA requires that ORR make a considered decision about each child's placement. In this case, ORR is doing just that, in accordance with its statutorily-mandated process, and Petitioners have not asserted any claim that would justify short-circuiting that process.

II. Petitioners Are Unaccompanied Alien Children Under the Relevant Statutory Definition

Petitioners argue that the Government lacks statutory authority to detain them because "Respondents failed to promptly place Petitioners in the least-restrictive setting that is in their best interest—at home with their mother." *See* Pet. ¶ 91. But while the statutory UAC definition requires that there be "no parent or legal guardian in the United States [that] is available to provide care and physical custody," *see* 6 U.S.C. § 279(g)(2), that is exactly what ORR is still in the process of determining.

Since February 2026, ORR has been actively engaged in the process of assessing whether Petitioners' proposed sponsor is in fact a parent available to provide care and physical custody of Petitioners. Once the agency makes that determination, Petitioners will cease to be UACs, for purposes of ORR custody, but until that time, Petitioners remain UAC's. *See* 8 U.S.C. § 1232(c)(3)(A) (requiring that HHS "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"); *D.B. v. Cardall*, 826 F.3d 721, 734 (4th Cir. 2016) ("[T]he UAC definition does not refer . . . to a parent's availability in a general sense. Rather, it asks whether a parent is 'available *to provide care and physical custody.*'. . . . And a parent who is not 'capable of providing for the child's physical and mental well-being'—as mandated by the suitable custodian requirement of 8 U.S.C. § 1232(c)(3)(A)—is not available to provide what is necessary for the child's health, welfare, maintenance, and protection."); *but see D.J.C.V. v. United States*, 605 F. Supp. 3d 571, 606 (S.D.N.Y. 2022) (finding that UAC's parent who was available to provide care for UAC, was qualified); *Maldonado v. Lloyd*, No. 18 Civ. 3089 (JFK), 2018 WL 2089348, at *5 (S.D.N.Y. May 4, 2018) ([A] child is not 'unaccompanied'—and therefore, neither a UAC nor properly within ORR's regulatory ambit—if a parent is physically present in the United States and, as a practical matter, is available to provide care and physical custody.")

III. The Government's Ongoing Care for Petitioners Does not Violate Their Procedural or Substantive Due Process Rights

Petitioners have not established that the procedures related to their custody and release by ORR are constitutionally inadequate. "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 at 335 (1976). When applying this framework to the case at hand, the current procedures do not violate Petitioners' procedural due process rights.

First, Petitioners' interests are limited by their status as both children and aliens. *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*, 507 U.S. at 302 ("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); *Zadvydas v. Davis*, 533 U.S. 678, 718 (2001) (Kennedy, J., dissenting) (aliens are entitled to the protections of the due process clause but "are subject to limitations and conditions not applicable to citizens."); *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.").

Second, ORR's procedures do not create a risk of erroneous deprivation of liberty interests because they are designed to release Petitioners to their sponsors as soon as ORR can be assured that such release is safe and in Petitioners' best interests. By requesting immediate release through this action, Petitioners seek to bypass ORR's process for assessing issues of safety and the child's best interest. *See Diego N.*, 26 Civ. 577, 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."). *See E.G.V.A., v. Sanchez et al.*, No. 26 Civ. 02258 (MKV), 2026 WL 2254646, at *2 (S.D.N.Y. Aug. 5, 2026) (finding that a UAC's habeas petition was moot when the UAC was released from ORR custody, noting that "Plaintiff has not identified any collateral consequences stemming from his detention—and the Court is aware of none—that would constitute a live case or controversy in light of his release.");

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).

Lastly, 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 serves 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 vetting process intended to protect the interests of UAC's such as Petitioners. Kronk Decl. ¶ 14. ORR was still required to conduct a home study as part of the sponsor vetting process in light of Petitioner E.X.'s disclosure that she was [redacted] even though LG.S.D. applied to be a Category 1 Sponsor on March 18, 2026; provided documentation of her passport, bank statements, and a self-employment declaration; and submitted to fingerprinting and DNA results. Kronk Decl. ¶ ¶ 40, 41, 44, 45, 54.

On May 1, 2026, a home study assessment was completed which led to a negative recommendation. Kronk Decl. ¶ 52. This was due to several deficiencies, including L.S.G.D.'s inconsistent statements regarding who lived at the home; an observation of an item that resembled a disassembled lower receiver of a semi-automatic firearm; lack of furniture in the bedroom L.S.G.D. reserved for Petitioners; and the lack of smoke alarms. *Id.* ¶ ¶ 47-51. An addendum home study was completed on August 4, 2026, which resulted in a positive home study recommendation. *Id.* ¶ ¶ 57. Thus, while L.S.G.D.'s sponsorship application has been pending since March, the vetting process has been ongoing since then. On August 6, 2026, the federal field specialist assigned to the sponsor's application made their final sponsor suitability recommendation under 45 C.F.R. § 410.1202. ORR is currently determining whether release of E.X. or P.X. would present a risk to either the UACs, the sponsor, the household, or the community under 45 C.F.R. § 410.1205. *Id.* ¶ 58.

Similarly, Petitioners' substantive due process claim lacks merit. The scope of the substantive due process analysis required by the Supreme Court jurisprudence is extremely narrow, and Petitioners carry 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." *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 847 (1998) (quoting *United States v. Salerno*, 481 U.S. 739, 746 (1987)). In cases challenging executive action, the threshold question is whether the challenged conduct was "so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *Lewis*, 523 U.S. at 847 n.8. The facts here do not even approach this standard; indeed, ORR is engaged in a release process that is meant to protect Petitioners' well-being, not harm it.

IV. The Government's Ongoing Care for Petitioners Do not Violate the Unaccompanied Children Foundational Rule and ORR Unaccompanied Children Bureau Policy Guide

To the extent the Petition can also be read to assert a claim under the *Accardi* doctrine or the Administrative Procedure Act, see Pet. ¶¶ 92-101, such a claim fails. The APA permits judicial review of agency action only when, inter alia, "there is no other adequate remedy in a court." 5 U.S.C. § 704. Where an alien's claims for relief "'necessarily imply the invalidity' of their confinement," those claims "must be brought in habeas" and not as APA claims. *See Trump v. J.G.G.*, 604 U.S. 670, 672 (2025).

Further, Section 706(1) of the APA permits a reviewing court to "compel agency action 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 ORR, in its child welfare experience and judgment, determines will safely care for the UAC. 8 U.S.C. § 1232(c)(3).

Additionally, Petitioners claim that under the Unaccompanied Children Program Foundational Rule, "ORR has made neither 'prompt' nor 'continuous' efforts to release [Petitioners; and] has not timely adjudicated their mother's pending sponsor application; and has invited—not avoided—unnecessary delay." Pet. ¶ 98. 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. INS*, 264 F.3d 378, 389 (3d Cir. 2001)).

Here, ORR has followed applicable laws, policies, and regulations in processing Petitioners' sponsorship applications. These included laws requiring ORR to consider the safety and suitability of any placement. Any *Accardi* claim also fails 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). The Court should also deny relief under *Accardi* for Petitioners' claim that ORR has "made neither 'prompt' nor 'continuous' efforts to release the children; has not timely adjudicated their mother's pending sponsor application; and has invited—not avoided—unnecessary delay." Pet. ¶ 98.

Thus, Petitioners' claims under the APA, TVPRA, and *Accardi* doctrine should also be denied.

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

CONCLUSION

For the foregoing reasons, the Court should deny the petition for a writ of habeas corpus.

Dated: New York, New York
August 7, 2026

Respectfully submitted,

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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. As measured by the word processing system used to prepare it, this memorandum contains 5,437 words.