

1 TODD BLANCHE
Attorney General
2 BILAL A. ESSAYLI
First Assistant United States Attorney
3 DANIEL A. BECK
Assistant United States Attorney
4 Acting Chief, Civil Division
ALARICE MEDRANO
5 Assistant United States Attorney
Acting Chief, Complex and Defensive Litigation Section
6 AARON KOLLITZ (Cal. Bar No. 238580)
Assistant United States Attorney
7 Federal Building, Suite 7516
300 North Los Angeles Street
8 Los Angeles, California 90012
Telephone: (213) 894-2083
9 E-mail: Aaron.Kollitz@usdoj.gov

10 Attorneys for Respondents

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

15 I.R.L.M., a minor, by and through Erica
16 Santamaria as Guardian Ad Litem,

17 Petitioner,

18 v.

19 ANGIE SALAZAR, ET AL,

20 Respondents.

No. 5:26-cv-04335

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

I.R.L.M. is a 15-year-old unaccompanied alien child (“UAC”), as defined at 6 U.S.C. § 279(g)(2), who was referred into the care and custody of the Office of Refugee Resettlement (“ORR”) and placed in an ORR care provider facility on January 15, 2026. *See* Declaration of Elizabeth Kronk (“Kronk Decl.”) ¶ 28.

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

And while Petitioner insists that I.R.L.M. must be released to his sponsor immediately, this request is inappropriate where ORR has not yet completed all required sponsor verification steps necessary to make a determination regarding F.M.D.’s suitability and a decision regarding release.

The applicable suitability determination process needs to be followed to ensure I.R.L.M.’s safety and well-being. Having failed to establish unlawful custody, the Petition should be denied.

I. LEGAL FRAMEWORK

A. The Homeland Security Act of 2002 (“HSA”)

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 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

1 U.S.C. § 279(g)(2). Further, it assigns ORR broad authority over the care and custody of
2 UAC while they are in federal custody due to their immigration status, including
3 coordinating their care and placement, ensuring their best interests in custodial decisions
4 and that they are protected from smugglers, traffickers, and others who might seek to
5 victimize and exploit UAC. 6 U.S.C. § 279(b)(1)(A) & (b)(2)(A)(ii).

6 **B. The Trafficking Victims Protection Reauthorization Act of 2008**

7 Congress enacted the Trafficking Victims Protection Reauthorization Act of 2008
8 (“TVPRA”) to strengthen protections for UACs and support their safe repatriation or
9 appropriate placement within the United States. The statute, consistent with the HSA,
10 makes HHS responsible for the care and custody of UACs. 8 U.S.C. § 1232(b)(1). It also
11 requires the HHS Secretary to decide that a sponsor “is capable of providing for the
12 child’s physical and mental well-being.” 8 U.S.C. § 1232(c)(3)(A). This safety and
13 suitability determination must “at a minimum, include verification of the custodian’s
14 identity and relationship to the child, if any, as well as an independent finding that the
15 individual has not engaged in any activity that would indicate a potential risk to the
16 child.” *Id.* The TVPRA also requires ORR to prioritize the safety and well-being of
17 UACs while in its care and upon release. One of the methods of doing so as
18 contemplated by the statute is to coordinate with the United States Department of
19 Homeland Security (“DHS”) for available vetting information—including from
20 immigration databases: “Not later than 2 weeks after receiving a request from the
21 Secretary of Health and Human Services, the Secretary of Homeland Security shall
22 provide information necessary to conduct suitability assessments from appropriate
23 Federal, State, and local law enforcement and immigration databases.” 8 U.S.C. §
24 1232(c)(3)(C). These responsibilities are carried out through cooperative agreements and
25 contracts with care providers under ORR policies and oversight. *See* 8 U.S.C. § 1232(i);
26 31 U.S.C. § 6305.

1 **C. The Unaccompanied Children Program Foundational Rule**

2 In April 2024, ORR promulgated the Unaccompanied Children Program
3 Foundational Rule (the “Foundational Rule”), codified at 45 CFR part 410, to establish
4 comprehensive regulations governing its UAC program. Specifically, the Foundational
5 Rule provides that ORR must release UAC from its custody “[s]ubject to an assessment
6 of sponsor suitability,” 45 C.F.R. § 410.1201, a process which starts with an “application
7 package” that “[p]otential sponsors shall complete.” *Id.* § 410.1202(a). The assessment
8 of sponsor suitability includes “review of the potential sponsor’s application package,
9 including verification of the potential sponsor’s identity, physical environment of the
10 sponsor’s home, and relationship to the unaccompanied child, if any, and an independent
11 finding that the individual has not engaged in any activity that would indicate a potential
12 risk to the unaccompanied child.” *Id.* § 410.1202(b).

13 While ORR is attempting to identify and vet a sponsor, ORR generally places
14 minors in “standard programs that are not restrictive placements.” 45 C.F.R. § 410.1104.
15 Standard programs must be “licensed by an appropriate State agency to provide
16 residential, group, or transitional or long-term home care services for dependent
17 children” or meet the requirements of state licensing that would otherwise be applicable
18 in states that do not license programs that care for UAC. 45 C.F.R. § 410.1001.

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

20 In December 2022, the U.S. Senate’s Committee on Homeland Security and
21 Governmental Affairs published a report detailing the inadequate treatment of UACs in
22 federal care and the insufficient safeguards to ensure they are not trafficked or abused
23 following their release. *See* United States Senate Committee on Homeland Security and
24 Governmental Affairs, Minority Staff Report, Federal Care of Unaccompanied Children:
25 Minors Remain Vulnerable to Trafficking and Abuse (“Minority Report”),
26 [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)
27 [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,

1 2026). A congressional subcommittee launched its investigation in 2015, following
2 reports that ORR placed eight children with members of a human trafficking ring that
3 forced the children to work on an egg farm for 12 hours a day, six or seven days a week.
4 *See id.* at 26.

5 In the December 2022 report, it was noted that despite the increased number of
6 UACs entering the United States in 2021 and 2022, ORR's completion of background
7 checks significantly declined from FY 2019. *See id.* at 35–37. Moreover, the report
8 identified the lack of adequate background checks for potential sponsors and the waiver
9 of background check requirements on household members, even when releasing a child
10 to their parent, as areas where additional safeguard measures were necessary. *See id.* at
11 37–45. It was therefore recommended that ORR update the UACB Policy Guide to
12 indicate that if a potential sponsor or household member refuses to comply with required
13 background checks, ORR should prohibit further consideration of the release of a child
14 into their custody until such a check could be completed. *See id.* at v.

15 In March 2023, after a Florida grand jury published a report outlining over 100
16 allegations concerning deficiencies in ORR's UAC Program, ORR established an
17 Integrity & Accountability ("I&A") Team to detect, prevent, mitigate, and report fraud
18 and exploitation perpetrated by sponsors, parents, and UACs. *See* Office of Refugee
19 Resettlement, Administration for Children and Families, Recommendations to Combat
20 Trafficking and Fraud in the UAC Program ("ORR Recommendations") at 1–3 (Feb. 4,
21 2025), <https://www.scribd.com/document/830798358/HHS-ORR-Report> (last visited
22 May 20, 2026).

23 The I&A Team identified several instances of fraudulent sponsorship applications,
24 document falsifications, and patterns of human trafficking and exploitation. *See id.* at 3–
25 8. For example, the I&A Team identified instances of children and sponsors using
26 altered birth certificates or unaltered birth certificates belonging to another person. *See*
27 *id.* at 7. The I&A Team also found that such fraud often involved collusion with others,
28

1 including a family member in the child's country of origin. *See id.* In one instance, the
2 I&A Team identified 10 UACs who were released to sponsors who committed
3 intentional document fraud in October 2024. *See id.*

4 The I&A Team also found cases of fraud, abuse, and extortion by prospective
5 sponsors. For example, the I&A Team reported that in late February 2024, an individual
6 sponsor using multiple identities and addresses to sponsor or attempt to sponsor multiple
7 children in Cleveland, Ohio was discovered after an investigation of potential child
8 abuse and trafficking. *See id.* at 7–8. The individual successfully sponsored a 15-year-old
9 female UAC whose allegations of sexual abuse and trafficking led to charges of rape
10 against the sponsor. *See id.* at 7. In another case, the I&A Team found that a woman and
11 her partner attempted to sponsor a total of 15 UACs over a five-year period by using
12 multiple aliases, with the aliases only discovered when the sponsor underwent
13 fingerprinting. *See id.* The I&A Team also found cases of individuals demanding
14 payment to sponsor a UAC. *See id.* at 8. In one scheme, there were 17 reported instances
15 of successful extortion totaling \$27,694. *See id.* Despite this background, ORR's data
16 revealed that less than 1% of sponsorship applications had been denied in recent years.
17 *See id.*

18 **D. ORR's Release Policies and Practices**

19 To carry out its statutory and regulatory mandate under the HSA and TVPRA, and
20 the Foundational Rule, ORR has developed policies and procedures for identifying and
21 conducting suitability assessments of potential sponsors. These procedures are generally
22 set out in ORR's publicly available UACB Bureau Policy Guide ("UACB Policy
23 Guide") at Section 2. *See* UACB Policy Guide, available at [https://acf.gov/orr/policy-](https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide)
24 [guidance/unaccompanied-children-bureau-policy-guide](https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide) (last visited July 30, 2026). In
25 light of ORR's obligation to protect UAC from smugglers, traffickers, and others who
26 may seek to victimize them, "safe and timely release . . . involves several steps,
27 including: the identification of sponsors; sponsor application; interviews; the assessment
28

1 (evaluation) of sponsor suitability, including verification of the sponsor's identity and
2 relationship to the child (if any), background checks, and in some cases home studies;
3 and post-release planning." UACB Policy Guide § 2.1.¹

4 A potential sponsor must complete a sponsorship application package, provide
5 unexpired government-issued identification documentation for the sponsor and any other
6 adults living in the household or identified in a sponsor care plan, and, along with any
7 adult living in his or her household, undergo a background check. *Id.* §§ 2.2.4, 2.5. All
8 potential sponsors must also submit proof of address, income, sponsor-child relationship,
9 individual taxpayer identification number or social security number, and criminal history
10 documents (if applicable). *Id.* § 2.2.4. Additionally, in certain circumstances, a home
11 study, which consists of interviews, a home visit, and a written report containing the
12 home-study case worker's findings, is performed. *Id.* § 2.4.2.

13 Once the assessment of the potential sponsor is complete, the care provider makes
14 a release recommendation. *Id.* § 2.7. ORR makes the final release decision. *Id.* ORR
15 will deny the sponsorship application of a potential sponsor who ORR determines is not
16 capable of providing for the physical and mental well-being of the UAC or if the
17 placement would result in danger to the child or the community. 45 C.F.R. § 410.1205
18 (Release decisions; denial of release to a sponsor).

19 **E. The One Big Beautiful Bill Act ("OBBA") Act Section 87001**

20 Concerned about the past abuses of the sponsorship program discussed above,
21 ORR's release policies regarding background checks were effectively ratified by
22 Congress in July 2025. Specifically, OBBA's Section 87001 includes the following list
23

24 ¹ There are three categories of potential sponsors: (1) Category 1, consisting of parents or
25 legal guardians, including qualifying step-parents that have legal or joint custody of the
26 child or teen; (2) Category 2, consisting of siblings, grandparents, or other immediate
27 relatives (such as aunts, uncles, first cousins), and includes biological relatives, relatives
28 through marriage, and half-siblings; and (3) Category 3, consisting of other sponsors,
such as distant relatives, unrelated adult individuals, or an institutional/organizational
sponsor. *Id.* § 2.2.1. Additionally, ORR classifies cases as Category 4 when no
potential sponsor has been identified. *Id.*

1 of things that ORR “shall” review when determining appropriateness of release using
2 appropriated funds:

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

4 A. the name of the potential sponsor and of all adult residents of the potential
5 sponsor’s household;

6 B. the social security number or taxpayer identification number of the potential
7 sponsor and of all adult residents of the potential sponsor’s household;

8 C. the date of birth of the potential sponsor and of all adult residents of the
9 potential sponsor’s household;

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

12 E. an in-person or virtual interview with, and suitability study concerning, the
13 potential sponsor and all adult residents of the potential sponsor’s household;

14 F. contact information for the potential sponsor and for all adult residents of
15 the potential sponsor’s household; and

16 G. the results of all background and criminal records checks for the potential
17 sponsor and for all adult residents of the potential sponsor’s household, which shall
18 include, at a minimum, an investigation of the public records sex offender registry, a
19 public records background check, and a national criminal history check based on
20 fingerprints.

21 OBBBA, Public Law 119-21, 139 Stat. 72. Section 87001 (July 4, 2025). These
22 requirements ensure that ORR’s obligation to undertake a full assessment of each
23 potential sponsor’s suitability is completed before ORR releases the child from its
24 custody.

25 **F. Appeals of ORR Decisions**

26 If ORR denies the application of a parent, legal guardian, or close relative
27 potential sponsor, the denied potential sponsor may appeal that decision through an
28

1 administrative process. 45 C.F.R. § 410.1206. ORR policy requires that, if ORR denies
2 the sponsor application of a parent, legal guardian, or close relative, the ORR Director,
3 or their neutral and detached designee must send the potential sponsor a Notification of
4 Denial Letter, after receiving all the required information and documentation in a
5 specific case. 45 C.F.R. § 410.1205(c); UACB Policy Guide § 2.7.7. Denied potential
6 sponsors who receive this letter may seek an appeal of ORR's denial decision, with a
7 hearing or without a hearing. *Id.* § 2.7.8.

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

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

25 The DAB's decision to affirm or overrule ORR's decision to deny release to a
26 potential sponsor is the final administrative decision of the agency on the application that
27 had been under consideration. UACB Policy Guide § 2.7.8. However, if there is new
28

1 information or a change in circumstances regarding the reunification application, or
2 regarding the unaccompanied alien child's circumstances, a new reunification
3 application may be submitted that highlights the change(s) and explains why such
4 changes should alter the initial decision. *Id.* Similarly, if ORR discovers new
5 information or becomes aware of a change in the circumstances of the potential sponsor
6 and/or the unaccompanied alien child, ORR may assess the case anew. *Id.*

7 **II. FACTUAL AND PROCEDURAL BACKGROUND**

8 As noted above, the minor Petitioner entered the United States as an
9 unaccompanied alien child. ORR's understanding is that I.R.L.M. was apprehended by
10 the Department of Homeland Security's Customs and Border Protection in San Ysidro
11 California on January 14, 2026. Kronk Decl. ¶ 29. He was referred to ORR custody the
12 same day, admitted to ORR custody on January 15th, 2026, and placed at New Life
13 Foster Family Agency. *Id.*

14 On January 15, 2026, the case manager identified I.R.L.M.'s aunt, P.L.M., as a
15 potential sponsor. *Id.* ¶ 30. The following day, the case manager contacted the potential
16 sponsor to review the sponsor application process. P.L.M. confirmed interest. *Id.* On
17 January 15, 2026, P.L.M. submitted her Authorization for Release of Information
18 ("ARI") and proof of identity document. *Id.*

19 On January 17, 2026, the case manager sent a referral to ORR's Division of
20 Sponsor Administration ("DSA") for P.L.M.'s sponsor application. *Id.* ¶ 31. On January
21 31, 2026, ORR contacted Petitioner's aunt regarding pending information and
22 documents required for sponsor assessments. *Id.* ¶ 32. While the ARI and proof of
23 identity documents had been submitted, the application itself had not been completed. *Id.*
24 On February 2, 2026, ORR emailed P.L.M. the link to the sponsor application. P.L.M.
25 did not submit a completed application during this time. *Id.* ¶ 33. Although some
26 progress had been made, ORR did not receive information about the household
27 composition needed to initiate background checks. *Id.*

1 On February 17, 2026, P.L.M.'s household member and I.R.L.M.'s mother
2 submitted her ARI form. *Id.* ¶ 34. On February 23, 2026, I.R.L.M.'s mother F.M.D.
3 updated the information in the sponsor application provided to P.L.M., having decided
4 that she would like to sponsor the child herself. *Id.* ¶ 35. This was done outside of ORR's
5 processes for assigning FFSs to assist the sponsor in completion of the vetting process.
6 *Id.* Seeing this, the assigned FFS spoke to I.R.L.M.'s mother F.M.D. the same day and
7 reviewed the sponsor application process and informed her she would need to alert the
8 program if she decided to move forward as the child's sponsor so a referral could be
9 made. *Id.*

10 On March 3, 2026, ORR received verification of the child's birth certificate from
11 the consulate of Mexico. *Id.* ¶ 36.

12 On March 4, 2026, ORR closed the case of I.R.L.M.'s aunt P.L.M. as a potential
13 sponsor after his mother F.M.D. requested to sponsor him. *Id.* ¶ 37.

14 A new referral was submitted to ORR for F.M.D. to sponsor I.R.L.M. so that an
15 FFS could be assigned. *Id.* ¶ 38. On March 23, 2026, ORR contacted F.M.D. to schedule
16 her fingerprint-based background checks. ORR scheduled the appointment for 9:30 a.m.
17 the following day. *Id.* On March 24, 2026, the sponsor attended her fingerprint-based
18 background check appointment. Results were received the same day and returned as
19 "appears clear". *Id.* ¶ 39. On March 30, 2026, ORR requested internet-based background
20 checks for the sponsor. *Id.* ¶ 40. These include public records checks and sex offender
21 registry checks. *Id.*

22 On April 21, 2026, ORR followed up with F.M.D. and again explained that every
23 household member (HHM) over the age of 18 must complete the ARI and participate in
24 background checks. *Id.* ¶ 41. ORR re-sent ARIs to both the sponsor and ACG for
25 correction as neither the sponsor nor ACG had provided their full address history. *Id.* On
26 May 7, 2026, DSA FFS Benavides resent the ARI packet via email to F.M.D. for
27
28

1 completion by the household members. *Id.* ¶ 42. On May 11, 2026, F.M.D. confirmed
2 receipt of the email and the attached ARI documents. *Id.* ¶ 43.

3 On May 19, 2026, ORR Division of Sponsor Administration (DSA) Federal Field
4 Specialist (FFS) Benavides scheduled a fingerprint appointment for the assigned
5 Alternate Caregiver (ACG), the child's maternal aunt. *Id.* ¶ 44. The fingerprint
6 appointment was scheduled for May 22, 2026, at 4:20 PM. *Id.*

7 On May 26, 2026, ORR received the sponsor's residential history to resolve
8 incomplete address information contained on the ARI. *Id.* ¶ 45. On May 27, 2026, and
9 May 28, 2026, ORR received sponsor's updated sponsorship application, which included
10 an updated Proof of Address (POA) and state-issued identification. *Id.* The same day, the
11 sponsor reported that her partner and adult daughter had recently moved into the
12 residence. *Id.* As a result, the sponsorship application was reopened to include the
13 additional household members. *Id.* ORR sent ARIs for completion by the new household
14 members to initiate fingerprint appointments and internet-based background checks. *Id.*
15 ORR advised the sponsor that updated Proof of Income (POI) and household
16 documentation remained outstanding. *Id.*

17 On May 28, 2026, ORR advised F.M.D. to have the designated Adult Caregiver
18 (ACG), as well as all household members aged 18 and older, complete the required
19 household forms. *Id.* ¶ 46. They were instructed to provide a complete residential
20 history, including all addresses where they have lived since turning 18 years of age,
21 along with a copy of the front and back of their government-issued photo identification.
22 *Id.* ORR also advised F.M.D. that Sections 4, 6, 8, 9, and 10 of the sponsor application
23 remained incomplete. *Id.* Additionally, F.M.D. was informed that updated proof of
24 income and copies of the Social Security cards for all household members aged 18 and
25 older were still needed to complete the application process. *Id.*

26 On June 3, 2026, ORR informed F.M.D. that her sponsor application still required
27 updated proof of income, ARIs for the additional household members, and updated
28

1 application information. *Id.* ¶ 47. On June 8, 2026, and June 9, 2026, ORR received one
2 pay stub from the sponsor following the start of new employment. *Id.* ¶ 48. ORR
3 informed the sponsor that ORR policy required either two months of pay statements or
4 an employer verification letter meeting proof of income requirements. *Id.* ORR again
5 requested outstanding ARIs for the recently disclosed household members. *Id.*

6 On June 15, 2026, ORR documented repeated requests for the household
7 members' ARIs, which had previously been requested on May 28, June 3, June 8, June 9,
8 and June 15. *Id.* ¶ 49. ORR instructed the sponsor to provide an employment verification
9 letter, due to insufficient pay history and informed the sponsor that the Home Study
10 referral could not proceed until all required documentation had been received. *Id.* On
11 June 23, 2026, and June 30, 2026, ORR conducted additional follow-up calls to the
12 sponsor to remind her that the newly reported household members still needed to submit
13 ARIs, identification documents, and proof of income. *Id.* ¶ 50. On July 9, 2026, ORR
14 still had not received the ARIs and government-issued identification for two household
15 members. *Id.* ¶ 51. Additional outstanding requirements included internet background
16 checks, fingerprint processing, a home study referral, DNA/identity verification, and the
17 Division of Vetting Report. *Id.* The purpose of this report is to verify whether there are
18 any pending or open investigations against the sponsor or their household members,
19 which would not appear on the fingerprint-based checks. *Id.* On July 17, 2026, ORR
20 contacted the sponsor regarding the outstanding ARIs and identification documents for
21 the newly reported household members. *Id.* ¶ 52. On July 20, 2026, the sponsor
22 submitted identification documents for both household members. *Id.* ¶ 53. ORR noted
23 that only the front sides of the identification documents had been provided and requested
24 that the sponsor submit copies of the back sides of both identification cards. ORR again
25 requested completion of the outstanding ARIs. *Id.*

26 On July 28, 2026, ORR submitted a discretionary home study referral. At the time
27 of referral, the home study remained pending acceptance and completion. *Id.* ¶ 54. On
28

1 this date, ORR also requested internet-based background checks for two of the
2 household members. *Id.* Results returned on July 30, 2026 for both household members
3 and came back as clear. *Id.*

4 On July 30, 2026, ORR contacted the sponsor to schedule a follow-up
5 appointment to address remaining vetting requirements. *Id.* ¶ 55. ORR scheduled
6 fingerprint appointments for two household members (HHM) for the following day. *Id.*
7 The sponsor submitted the social security card for HHM1. *Id.* The social security
8 documentation for HHM2 remains outstanding, as F.M.D. had only provided HHM2's
9 social security number rather than a copy of the required documentation. *Id.*

10 As of today's date, the following actions have been completed:

- 11 • Sponsor fingerprint referral submitted;
- 12 • Internet background checks requested/completed for the sponsor and the
- 13 two adult household members;
- 14 • Sponsor assessment completed; and
- 15 • Discretionary home study referral submitted.

16 *Id.* ¶ 56.

17 The following actions remain pending completion:

- 18 • Signed sponsor application;
- 19 • Completion of the home study. A report is expected on August 12, 2026;
- 20 • DNA/Identity verification appointment;
- 21 • Updated proof of income for the sponsor;
- 22 • Proof of SocialSecurity Number or Tax Identification Numberfor the
- 23 Sponsor and "HHM2" (ORR will accept proof of application for ITIN or
- 24 documentation that the individual does not have a Federal tax purpose to
- 25 have a SSN/ITIN);
- 26 • Child abuse/neglect checks based on the sponsor's disclosure of prior
- 27 history with Child Protective Services; and

- Division of Vetting report.

Id. ¶ 57.

II. ARGUMENT

A. Administrative Exhaustion is Appropriate Here

Petitioner's habeas action is untimely where, as here, the sponsorship application for I.R.L.M. is still incomplete. *See, e.g., Richmond v. Scibana*, 387 F.3d 602, 604 (7th Cir. 2004) (discussing the "common-law exhaustion rule [that] applies to § 2241 actions"); *Baker v. Warden*, No. 23 C 50028, 2025 WL 1398979, at *3 (N.D. Ill. May 14, 2025) (petitioners "must exhaust their federal administrative remedies before seeking habeas relief in court"). Still, when Congress has not imposed a statutory administrative exhaustion requirement, "sound judicial discretion governs" whether exhaustion should be required. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); *see also Gonzalez v. O'Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004). The exhaustion doctrine both allows agencies to apply their special expertise in interpreting relevant statutes and promotes judicial efficiency. *Id.* But in making such an assessment, 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*, 503 U.S. at 146.

The general rule is that parties must exhaust "prescribed administrative remedies before seeking relief from the federal courts." *Id.* at 144-45. This case falls well within this general rule because the sponsorship application for F.M.D., I.R.L.M.'s mother and current potential sponsor, remains pending and important vetting requirements such as a home study and child abuse and neglect checks have not yet been completed. *See Kronk Decl.* ¶ 57.

There are "two exceptions to the exhaustion requirement.... First, exhaustion will be excused when resort to such procedures would be futile, and second, the exhaustion requirement is excused when a claimant is wrongfully denied meaningful access to

administrative procedures.” *Lieske v. Morlock*, 570 F. Supp. 1426, 1429 (N.D. Ill. 1983). Neither of these exceptions apply. ORR is actively engaging with the current potential sponsor for I.R.L.M., his mother, F.M.D., and assisting her sponsorship process which remains ongoing. *See generally* Kronk Decl. ¶¶ 35-57. Further, there is no allegation whatsoever that ORR is preventing F.M.D. from completing outstanding sponsorship requirements; in fact, the record shows that ORR assisted F.M.D. with her sponsor application from the moment that she expressed interest in sponsoring I.R.L.M. instead of his maternal aunt and her household member, P.L.M. *Id.*; *see also Woodford v. Ngo*, 548 U.S. 81, 90–91 (2006) (“Proper exhaustion demands compliance with an agency’s deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings.”).

The statutory and regulatory framework described above contemplates a robust administrative process to allow ORR to vet sponsorship applicants. *See supra* at 2-9. Bypassing that process entirely via habeas relief would directly undermine the review-process that the HHS Secretary “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.” 8 U.S.C. § 1232(c)(3)(A) (emphasis added). There is thus little reason why exhaustion should not be required here.

B. ORR's Custody of Petitioner is Required by Statute

In addition, it is worth noting that this case is fundamentally different from a typical habeas petition because “juveniles, unlike adults, are always in some form of custody.” *Flores*, 507 U.S. at 302. 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.*; *see also Schall v. Martin*, 467 U.S. 253, 265 (1984) (noting that a “juvenile’s interest in freedom from institutional restraints . . . must be qualified by the recognition that juveniles, unlike

adults, are always in some form of custody” because they “are not assumed to have the capacity to take care of themselves”).

In this case, the contrast is even more stark, as Petitioner entered the United States designated as an unaccompanied alien child by DHS. Kronk Decl. ¶ 29. This means that ORR took custody of I.R.L.M. under the HSA. And in that circumstance, the TVPRA reinforces and expands upon the government’s responsibility for the care of UACs. Unlike adults in the custody of other agencies, ORR cannot simply release a child in its care on their own recognizance, or to just anyone who is willing to sponsor them. *See* 6 U.S.C. § 279(b)(2)(B). Rather, the TVPRA requires that ORR make a considered decision about a child’s placement based upon all the circumstances. *See* 8 U.S.C. § 1232(c)(2)(A), (c)(3)(A).

As discussed above, the petition should fail because I.R.L.M.’s current potential sponsor, his mother, F.M.D., has a pending application with ORR. Kronk Decl. ¶ 57. Instead of going the direct route contemplated under the statute and regulations, they have attempted to short-circuit that process by going to district court and filing a habeas petition to have the Court make its own “best interests” determination. But considering that the sponsorship application for I.R.L.M. is currently in the sponsor-assessment process and nearly complete, ORR’s actions in this matter strictly follow the statutory requirements. As discussed above, ORR is prohibited from releasing Petitioner to a sponsor’s custody until it 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). Accordingly, ORR is acting in accordance with the TVPRA’s requirements, and the Petitioner should not be released to his potential sponsor, F.M.D., unless and until ORR deems her suitable.

////

////

////

C. Nothing About ORR's Continued Care of I.R.L.M. Violates the Fifth Amendment

1. Substantive Due Process

In the Second Claim for Relief, Petitioner asserts a violation of the substantive component of the Due Process Clause, arguing that ORR's continued care of I.R.L.M. infringes on his and his mother's fundamental interest in his parent-child relationship and family integrity. Pet. ¶¶ 86-93, 109-115. "Substantive due process is far narrower in scope than procedural due process" and requires Petitioner to show not only that he was deprived of a constitutionally protected interest, "but also that the action causing the deprivation falls so far beyond the outer limits of legitimate governmental action that no process could cure the deficiency." *J.E.C.M. by and Through His Next Friend Saravia v. Lloyd*, 352 F.Supp.3d 559, 586 (E.D. Va. 2018) (citing *Plyler v. Moore*, 200 F.3d 365, 374 (4th Circ. 1996)) (emphasis, internal quotation marks, and citations omitted in the original) (holding that unaccompanied alien child plaintiffs failed to state a substantive due process claim where they alleged that ORR's policies and procedures made it increasingly difficult for children to be released from ORR's care and custody). Petitioner simply cannot make that requisite showing here.

As discussed above, any constitutional liberty interest that the Petitioner's mother has in raising him is "neither absolute nor unqualified," and ORR has countervailing interests in protecting him from risk of harm upon release, as required by the TVPRA. *JECEM*, 352 F.Supp.3d at 587-88 (citing *Martin*, 346 F.3d at 506) (internal quotation marks omitted); 8 U.S.C. § 1232(c)(3)(A). Thus, "the constitutionality of state actions that interfere with family integrity depends on the adequacy of the procedures available to contest those actions." *Id.* at 588 (citing *D.B.*, 826 F.3d at 741) (internal quotation marks omitted). As shown above, ORR has put in place ample due process procedures in its regulations and policy which enable denied potential sponsors who are parents to contest ORR's release decisions. Here, however, the sponsor application of I.R.L.M.'s

1 mother, F.M.D., is still pending. Kronk Decl. ¶ 57.

2 Further, to demonstrate that governmental conduct “shocks the conscience,”
3 “[Petitioner] must allege conduct that is ‘patently egregious’ or ‘outrageous,’ that
4 ‘violates the decencies of civilized conduct,’ or that fails to ‘comport with traditional
5 ideas of fair play and decency.” *J.E.C.M.*, 352 F.Supp.3d at 586-87 (citing *County of*
6 *Sacramento v. Lewis*, 523 U.S. 833, 846–49 (1998)) (internal quotation marks and
7 citations omitted in the original). Moreover, “[t]o be sufficiently egregious, the official
8 conduct must do more than produce a harmful or unfortunate result . . . rather, the
9 conduct must be so out of step with contemporary norms and comparable governmental
10 practices that no decent society can tolerate it.” *Id.* (citation omitted). Under the
11 circumstances here, where F.M.D. failed to provide all the required information and
12 documentation, *see* Kronk Decl. ¶ 57; vetting requirements for F.M.D. are still pending,
13 *see id.*; and ORR has actively assisted F.M.D. in completing sponsorship requirements,
14 *see generally id.* ¶¶ 35-57, ORR’s conduct cannot be said to “shock the conscience.” *See*
15 *D.B.*, 826 F.3d at 741 (“[W]hen a state’s interference with parental control is predicated
16 on a determination that the parent is unable to provide adequate care for a child, such
17 interference does not contravene substantive due process, at least in the absence of
18 governmental action that shocks the conscience”). Thus, Petitioner’s substantive due
19 process challenge is unavailing.

20 2. Procedural Due Process

21 Petitioner’s Third Claim argues that ORR’s continued care of him constitutes a
22 procedural due process violation because he has been denied his interest in liberty and
23 reunification with his mother without adequate procedural protections. Pet. ¶¶ 94-102,
24 116-123. Petitioner’s arguments are unavailing, however, because they are contrary to
25 well-established precedent.

26 A procedural due process analysis typically considers the three factors articulated
27 by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976). That framework
28

1 requires consideration of the following factors: (1) “the private interest that will be
 2 affected by the official action”; (2) “the risk of an erroneous deprivation of such interest
 3 through the procedures used and the probable value, if any, of additional or substitute
 4 procedural safeguards”; and (3) “the Government’s interest, including the function
 5 involved and the fiscal and administrative burdens that the additional or substitute
 6 procedural requirement would entail.” *Id.* at 335.

7 The first *Mathews* factor addresses “the private interest that will be affected by the
 8 official action.” *Id.* at 334. Petitioner identifies two constitutional interests: that of
 9 I.R.L.M. being free from custody and that of a right to family integrity or familial
 10 association between the child and his mother who sought to sponsor him. Pet. ¶ 94.
 11 Neither interest outweighs the remaining *Mathews* factors under the circumstances of
 12 these cases where the sponsorship application for I.R.L.M. remains pending, and the
 13 potential sponsor has yet to complete essential vetting requirements. Kronk Decl. ¶ 57.
 14 Moreover, ORR has repeatedly notified F.M.D. of the outstanding documents needed
 15 and is actively her in completing them.² *See generally* Kronk Decl. ¶¶ 35-57.

16 As the Supreme Court has recognized, children “unlike adults, are always in some
 17 form of custody” and do not have “a right to come and go at will[.]” *Reno v. Flores*, 507
 18 U.S. 292, 302 (1993) (quoting *Schall v. Martin*, 467 U.S. 253, 265 (1984)). As such, a
 19 UAC’s “interest in freedom from institutional restraints” may be subordinated to a
 20

21 ² In accordance with the ORR policy, “ORR reviews the cases of all pending
 22 sponsor applications for UACs in ORR custody for 90 days. The purpose of the review is
 23 to identify and resolve the reasons that a sponsor application remains pending in a timely
 24 manner. Upon completion of the review, case managers will update the sponsor and
 25 unaccompanied alien child on the status of the case, highlighting the reasons that the
 26 sponsorship process is incomplete. [T]he case manager will work with the sponsor,
 27 relevant stakeholders, and the ORR or Federal Field Specialist (FFS) on a plan to address
 28 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 state's interest in the child's welfare." *Schall*, 467 U.S. at 265. Additionally, a parent's
2 interest in raising their child is "neither absolute nor unqualified." *Martin v. St. Mary's*
3 *Dep't of Soc. Servs.*, 346 F.3d 502, 506 (4th Cir. 2003); *see also D.B. v. Cardall*, 826
4 F.3d 721, 741 (4th Cir. 2016) ("[A]lthough 'the interest of parents in the care, custody,
5 and control of their children' has been recognized as a 'fundamental liberty interest[],'
6 *Troxel v. Granville*, 530 U.S. 57, 65 (2000), that right is qualified, and in most cases,
7 "the constitutionality of state actions that interfere with family integrity depends on the
8 adequacy of the procedures available to contest them."). That interest must give way to
9 the state's responsibility to investigate circumstances that could lead to neglect and
10 abuse, as required by the TVPRA for ORR. *See* 8 U.S.C. § 1232(c)(3)(A) (prohibiting
11 ORR from releasing a child to a sponsor unless ORR makes an affirmative determination
12 "that the proposed custodian is capable of providing for the child's physical and mental
13 well-being") (emphasis added).

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

24 As the *Lucas R* court recognized, "[d]ue process does not demand that the Court
25 impose procedures that shift the burden to ORR to prove that the sponsor is unfit." *Id.*
26 Instead, acknowledging unique interests and challenges in the immigration context and
27 the broad statutory discretion provided to ORR by the TVPRA for conducting the

1 mandated suitability determinations to ensure safe releases of UACs to potential
 2 sponsors, the court stated that, “a minor’s rights are adequately protected so long as the
 3 minor and sponsor have the opportunity to appeal a denial and submit additional
 4 evidence of a sponsor’s fitness, if necessary.” *Id.*; 8 U.S.C. § 1232(c)(3)(A). The court
 5 found that ORR’s then-existing hearing policies that at the time applied only to UAC
 6 with parent or legal guardian sponsors “provide the fundamental hallmarks of due
 7 process, including review by a neutral factfinder who is not involved in the original
 8 denial.” *See Lucas R*, 2022 WL 2177454, at *26.³ The court only added that the notice
 9 must inform denied potential sponsors that they are entitled to be represented by counsel
 10 (at no cost to the Government). *Id.* Notably absent from the *Lucas R* court’s reasoning,
 11 however, was any mention of a requirement that due process demands a pre-
 12 determination hearing before a sponsorship decision is ever made. *Id.* Here, ORR has
 13 regularly contacted I.R.L.M.’s current sponsor, his mother F.M.D., to help her complete
 14 her sponsor application and vetting requirements. Kronk Decl. ¶¶ 35-57. F.M.D.’s
 15 application for sponsorship of I.R.L.M. is still pending, and as a result, ORR has not
 16 made a final decision whether it is safe to release I.R.L.M. to her. Kronk Decl. ¶ 57.

17 Petitioner has likewise not made any showing of unreasonable delay. The record
 18 demonstrates that Petitioner’s aunt, P.L.M., initially commenced the sponsor application
 19 process in January but discontinued it on March 23 when I.R.L.M.’s mother decided to
 20 seek sponsorship of I.R.L.M. herself. Kronk Decl. ¶¶ 31-34. At that point, ORR actively
 21 engaged with F.M.D. as a potential sponsor and contacted her repeatedly over the next
 22 several months to request documentation, often requesting the same outstanding

23 ³ On August 30, 2022, in alignment with its partial summary judgment decision,
 24 the *Lucas R* court issued a preliminary injunction ordering ORR to extend its notice and
 25 appeal processes in the ORR Policy Guide which were previously afforded only to
 26 denied sponsors who are parents and legal guardians to close relatives (but not distant
 27 relatives or non-relatives), among other changes to its policies regarding release of
 28 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 documents multiple times. *See generally* id. ¶¶ 35-57. Currently, several important
2 vetting requirements, including a home study and child abuse and neglect checks, among
3 others, remain pending, and therefore, ORR does not have the information necessary to
4 inform its sponsor suitability determination, and release decision. *Id.* ¶ 57.

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

13 In sum, an application of the *Mathews* factors to the specific circumstances of
14 Petitioner’s case demonstrates that ORR has not violated I.R.L.M.’s or F.M.D.’s
15 procedural due process rights.

16 **D. Petitioner’s TVPRA Claim Fails**

17 In his First Claim for Relief, Petitioner asserts that ORR violated the TVPRA’s
18 requirement that I.R.L.M., as a UAC, be placed in “the least restrictive setting that is in
19 his best interests. Pet. ¶¶ 103-108. The TVPRA does not provide a standalone cause of
20 action because it does not contain an express waiver of the government’s sovereign
21 immunity, and the government has not otherwise consented to suit under that statute. *See*
22 8 U.S.C. § 1232; *Lane v. Pena*, 518 U.S. 187, 192 (1996); *cf. Adams v. Calhoun Cty.*,
23 No. 18-1867, 2019 WL 3501815, at *2 (6th Cir. 2019) (no waiver of state sovereign
24 immunity); *Mjsilovic v. Okla. Ex rel. Bd. of Regents for Univ. of Okla.*, 841 F.3d 1129,
25 1132–34 (10th Cir. 2016) (same). Accordingly, any claim that ORR has violated the
26 TVPRA must be evaluated under the APA (§ 706(2)(A)) as a claim that the agency
27 action was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
28

1 with law.” *See Lucas R.*, 2018 WL 7200716, at *7 n.12. Section 704 of the APA
2 provides for judicial review of “[a]gency action made reviewable by statute and final
3 agency action for which there is no other adequate remedy in a court.” 5 U.S.C. § 704.
4 Here, however, where no statute makes ORR’s preliminary sponsor vetting efforts
5 reviewable, F.M.D.’s sponsor application is being processed, essential vetting
6 requirements are still pending, and ORR has not made its final agency decision regarding
7 the suitability of the potential sponsor and the safety of releasing Petitioner to her,
8 judicial review of such a claim under the APA is not available. Kronk Decl. ¶¶ 35-57.

9 Further, Section 706(1) of the APA permits a reviewing court to “compel agency
10 action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).⁴ The Supreme
11 Court has held that a claim under 5 U.S.C. § 706(1) can only proceed where the plaintiff
12 asserts that an agency failed to take a discrete action that the agency is required to take.
13 *See Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 64 (2004). Accordingly,
14 an agency’s purported delay in acting cannot be unreasonable with respect to action that
15 is not required. *See id.* Here, the TVPRA mandates that ORR release a child only to a
16 sponsor that ORR, in its child welfare experience and judgment, determines will safely
17 care for the UAC. 8 U.S.C. § 1232(c)(3)(A). ORR is actively engaged with the potential
18 sponsor and still pending essential documentation including a home study report and
19 child abuse and neglect checks, among others, which are needed to assess F.M.D.’s
20 suitability and make an informed decision as to the safety of release. Kronk Decl. ¶ 57.
21 Upon receipt of such information, ORR will promptly make its final sponsor suitability
22 determination and release decision. *Id.*

23 VI. CONCLUSION

24 For the foregoing reasons, Respondents respectfully request that the Petition be
25 denied.

26
27 ⁴ Although Petitioner does not cite § 706(1), that is the section applicable to
28 claims based on delay.

1 Dated: August 10, 2026

Respectfully submitted,

2 TODD BLANCHE

3 Attorney General

4 BILAL A. ESSAYLI

5 First Assistant United States Attorney

DANIEL A. BECK

6 Assistant United States Attorney

7 Acting Chief, Civil Division

8 ALARICE M. MEDRANO

Assistant United States Attorney

9 Acting Chief, Complex and Defensive Litigation Section

10 /s/ Aaron Kollitz

AARON KOLLITZ

11 Assistant United States Attorney

12 Attorneys for Respondents