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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

R.M.L. and V.M.L.,

Petitioners,

v.

RUBY HERANDEZ, Federal Field Specialist, Office of Refugee Resettlement, *et al.*,

Respondents.

No. 2:26-cv-08585-MRA-DFM

RESPONDENTS' ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

[Declaration of Elizabeth Kronk filed concurrently]

Honorable Douglas F. McCormick
United States Magistrate Judge

I. INTRODUCTION

R.M.L. and V.M.L. ("Petitioners") are two minor unaccompanied alien children ("UACs") siblings who entered the United States on January 21, 2026. *See generally* Dkt. 1 and Declaration of Elizabeth Kronk ("Kronk Decl.") at ¶ 28. Petitioners were referred into the care and custody of the Office of Refugee Resettlement ("ORR") and placed into an ORR care provider facility January 22, 2026. Kronk Decl. at ¶ 29. On January 23, 2026, B.L.G., Petitioners' mother, submitted an Application for Sponsorship and an Authorization for Release of Information ("ARI") to ORR. Kronk Decl. at ¶ 31.

In this case, there are outstanding issues with B.L.G.'s sponsorship application that must be addressed. *See* Kronk Decl. ¶¶ 65-66. These essential pending sponsor vetting requirements cannot be dispensed with in the name of immediate family reunification. *Id.*

For unaccompanied alien children, ORR cannot presume that a subsequent sponsor applicant, even when a parent or close relative, is able to adequately and properly take care of their needs. ORR must follow the proper processes and investigation.

The applicable sponsor suitability assessment process needs to be followed to ensure that Petitioners are released to a sponsor who is capable of providing for their physical and emotional needs. Having failed to establish unlawful custody, the Petition should be denied.

II. LEGAL FRAMEWORK

A. The Homeland Security Act of 2002 ("HSA")

In 2002, Congress enacted the HSA, Pub. L. No. 107-296, 116 Stat. 2135 (2002) (codified in relevant part at 6 U.S.C. § 279), which abolished the Immigration and Naturalization Service ("INS") and transferred responsibility for the care and placement of UACs from INS to ORR. 6 U.S.C. §§ 279(a), (b)(1)(A), (g)(2). The HSA defines a UAC as "a child who—(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or

legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody." 6 U.S.C. § 279(g)(2). Further, it assigns ORR broad authority over the care and custody of UACs while they are in federal custody due to their immigration status, including coordinating their care and placement, ensuring their best interests in custodial decisions and that they are protected from smugglers, traffickers, and others who might seek to victimize and exploit UACs. 6 U.S.C. § 279(b)(1)(A) & (b)(2)(A)(ii).

B. The Trafficking Victims Protection Reauthorization Act of 2008

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

C. The Foundational Rule

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

The Foundational Rule provides that ORR identifies a standard program placement for the UACs upon notification from any federal department or agency that a child in its custody is a UAC and therefore must be transferred to ORR custody. 45 C.F.R. § 410.1101(b). ORR then works with the referring federal government department or agency to accept transfer of custody of the UAC, consistent with the statutory and regulatory requirements at 8 U.S.C. § 1232(b)(3) and 45 C.F.R. § 410.1101(c). ORR places each UAC in the least restrictive setting that is in the best interest of the child and appropriate to the unaccompanied alien child's age and individualized needs. 45 C.F.R. § 410.1103(a). ORR may place a child in a shelter facility, foster home or group home (which may be therapeutic), heightened supervision facility or secure facility (including residential treatment centers), or other care facility that can provide for their specific individualized needs, including an out-of-network ("OON") placement (which may be restrictive or non-restrictive). 45 C.F.R. § 410.1102; *see also* ORR UACB Policy Guide § 1.2, https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide (last accessed June 20, 2026). ORR also considers several factors relevant to the UAC's placement, including but not

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

limited to: danger to self; danger to the community/others; runaway risk; trafficking in persons or other safety concerns; age; and gender. 45 C.F.R. § 410.1103(b).

ORR is required to make and record the prompt and continuous efforts on its part towards release of children in its custody to appropriately vetted sponsors. *See* 45 C.F.R. § 410.1203(a). All individuals seeking to sponsor a child in ORR custody (notably, even a UAC's parent or legal guardian) must undergo the sponsor assessment process, consistent with ORR's statutory responsibilities. *See* 8 U.S.C. § 1232(c)(3)(A) ("an unaccompanied alien child 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"); 45 C.F.R. §§ 410.1201(a), 1202(b). This understanding was further reinforced in the One Big Beautiful Bill Act of 2025, Pub. L. No. 119-21, title VIII, subtitle H, section 87001(c)(1) (2025) (defining "potential sponsor" as "an individual or entity who applies for the custody of an unaccompanied alien child").

The suitability assessment includes "verification of the potential sponsor's identity," 45 C.F.R. § 410.1202(b), "verification of the employment, income, or other information provided by the potential sponsor as evidence of the ability to support the child," 45 C.F.R. § 410.1202(c), and "[i]n all cases, ORR shall require background and criminal records checks," *id.*, which may include a criminal history check based on fingerprints. The Foundational Rule thus reinforces congressional intent articulated in the HSA and TVPRA that HHS ensure UAC protection from human traffickers and release UACs only to those sponsors capable of protecting their well-being. *See* 45 C.F.R. § 410.1003; *see also* 8 U.S.C. § 1232(c)(3)(A)–(C) (requiring such vetting be conducted, along with potential home studies and further information sharing with DHS to effectuate that process).

D. Human Trafficking and UAC Sponsorship Fraud

In December 2022, the U.S. Senate's Committee on Homeland Security and Governmental Affairs published a report detailing the inadequate treatment of UACs in

federal care and the insufficient safeguards to ensure they are not trafficked or abused following their release. *See* United States Senate Committee on Homeland Security and Governmental Affairs, Minority Staff Report, Federal Care of Unaccompanied Children: Minors Remain Vulnerable to Trafficking and Abuse ("Minority Report"), https://www.govinfo.gov/content/pkg/GOVPUB-Y4_G74_9-PURL-gpo190271/pdf/GOVPUB-Y4_G74_9-PURL-gpo190271.pdf (last accessed May. 20, 2026). A congressional subcommittee launched its investigation in 2015, following reports that ORR placed eight children with members of a human trafficking ring that forced the children to work on an egg farm for 12 hours a day, six or seven days a week. *See id.* at 26.

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

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

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

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

E. ORR Release Policies and Practices

To carry out its statutory mandate under the HSA and TVPRA, and consistent with 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 Policy Guide (mentioned above). 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. Rather, ORR only takes children into its custody upon referral by another federal agency, as described in statute. *See* 8 U.S.C. § 1232(b)(3) (requiring, absent exceptional circumstances, that any agency of the federal government transfer the custody of a child to HHS no later than 72 hours after determining that the child is a UAC). In this regard, ORR is also very different from state child welfare agencies, which typically retain such authority post-placement.

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 UACs 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. There are four 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. UAC Policy Guide § 2.2.1. ORR (through its care providers) 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, resources, risk factors, and relationship to the sponsor. UAC Policy Guide §§ 2.2.2, 2.4.

A potential sponsor must complete a sponsorship application, 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 household, undergo a background check. UACB Policy Guide §§ 2.2.4, 2.5. All potential sponsors must also submit proof of address, income, sponsor-child relationship, and criminal history documents (if applicable). UACB Policy Guide § 2.2.4.

Additionally, in certain circumstances a home study, which consists of interviews, a home visit, and a written report containing a case worker's findings, is performed. UACB Policy Guide § 2.4.2.

Once the assessment of the potential sponsor is complete, the care provider makes a release recommendation to ORR. 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. ORR makes the final release decision. 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. UACB Policy Guide § 2.7. The Policy Guide describes various circumstances under which ORR will or may deny release.

Generally, 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. UACB Policy Guide § 2.7.4; *see also* 45 C.F.R. § 410.1205 (Release decisions; denial of release to a sponsor).

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

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

appropriated funds:

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

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

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

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

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

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

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

G. 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. Section 87001 (July 4, 2025). 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.

G. Appeals of ORR Decisions

If ORR denies the application of a parent, legal guardian, or close relative potential sponsor, the denied potential sponsor may appeal that decision through an administrative process. 45 C.F.R. § 410.1206. ORR policy requires that, if ORR denies the sponsor application of a parent, legal guardian, or close relative, the ORR Director, or their neutral and detached designee must send the potential sponsor a Notification of

Denial Letter, after receiving all the required information and documentation in a specific case. *See* 45 C.F.R. § 410.1205(c); UACB Policy Guide § 2.7.7. Denied potential sponsors who receive this letter may seek an appeal of ORR's denial decision, with a hearing or without a hearing. *Id.* § 2.7.8.

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

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

The DAB's decision to affirm or overrule ORR's decision to deny release to a potential sponsor is the final administrative decision of the agency on the application that had been under consideration. UACB Policy Guide § 2.7.8. However, if there is new information or a change in circumstances regarding the reunification application, or regarding the unaccompanied alien child's circumstances, a new reunification application may be submitted that highlights the change(s) and explains why such changes should alter the initial decision. UACB Policy Guide § 2.7.8. Similarly, if ORR

discovers new information or becomes aware of a change in the circumstances of the potential sponsor and/or the unaccompanied alien child, ORR may assess the case anew. UACB Policy Guide § 2.7.8.

H. Children with Disability in ORR Custody

In notice-and-comment rulemaking, ORR acknowledged that Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, is applicable to ORR and its care providers and codified key provisions of the then-anticipated Disability Settlement in the *Lucas R* litigation[2] in the Foundational Rule. *See* 45 CFR § 410.1311; *see also* 45 CFR parts 84 (implementing regulations applicable to ORR care providers), and 85 (implementing regulations applicable to ORR). Thus, ORR affirmed its commitment to ensuring UACs are protected from discrimination and have equal access to the UAC program, consistent with Section 504. *See* 89 FR 34388; *see also* ORR UACB Policy Guide, § 3.8 (incorporating all requirements of the *Lucas* R Disability Settlement).

Per the Foundational Rule and ORR policy, ORR must administer the UAC Program in the most integrated setting appropriate to the needs of UACs with disabilities as is consistent with 45 C.F.R. § 85.21(d), unless ORR can demonstrate that this would fundamentally alter the nature of its UAC Program. 45 C.F.R. § 410.1311(b); ORR UACB Policy Guide, § 3.8. ORR must also make reasonable modifications to its programs, including the provision of services, equipment, and treatment, so that a UAC with one or more disabilities can have equal access to the UAC Program in the most

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[2] The *Lucas R* Disability Settlement is available online on ORR's website here: https://acf.gov/system/files/documents/orr/Lucas-R-Disabilities-Settlement-Agreement.pdf. *See also Lucas R* Disability Implementation Plan, available at: https://acf.gov/sites/default/files/documents/orr/Implementation-Plan-for-the-Lucas-R.-Disabilities-Settlement-Agreement_0.pdf. Among other claims, Plaintiffs in that litigation alleged ORR's placement/release practices discriminated against children with behavioral, mental health, intellectual, and/or developmental disabilities in violation of Section 504 (29 U.S.C. § 794). *See* First Amended Complaint, *Lucas R v. Azar*, Case No. 2:18-cv-05741-DMG-PLA (C.D. Cal. Sept. 7, 2018), at ¶¶ 153-177, 191-194.

integrated setting appropriate to their needs. 45 C.F.R. § 410.1311(c); ORR UACB Policy Guide, § 3.8. "ORR is not required, however, to take any action that it can demonstrate would fundamentally alter the nature of a program or activity." 45 C.F.R. § 410.1311(c); *see also* ORR UACB Policy Guide, § 3.8.

For a child with one or more disabilities, ORR policy requires the development of an Individualized Section 504 Service Plan to "assist care providers in identifying and documenting the child's disability-related needs as well as the services, supports, and reasonable accommodations that must be provided to enable the child to reside in the least restrictive setting in their best interests and the most integrated setting appropriate to their needs." ORR UACB Policy Guide, § 3.8.3. "The Individualized Section 504 Service Plan also incorporates disability-related requirements necessary for the completion of the reunification process (i.e., a home study), which allows the care provider to plan and commence crucial steps early in the process (i.e., identification of post-release services)." ORR UACB Policy Guide, § 3.8.3.

Regarding the release of children with disabilities from ORR custody to a sponsor, ORR's regulations and policies require:

- "ORR's assessment under § 410.1202 of a potential sponsor's capability to provide for the physical and mental well-being of the child must necessarily include explicit consideration of the impact of the child's disability or disabilities. Correspondingly, ORR must consider the potential benefits to the child of release to a community-based setting."
- "In planning for a child's release and conducting post-release services (PRS), ORR and any entities through which ORR provides PRS shall make reasonable modifications in their policies, practices, and procedures if needed to enable released unaccompanied children with disabilities to live in the most integrated setting appropriate to their needs, such as with a

sponsor."[3]

- "ORR will affirmatively support and assist otherwise viable potential sponsors in accessing and coordinating appropriate post-release community-based services and supports available in the community to support the sponsor's ability to care for a child with one or more disabilities, as provided for under § 410.1210."
- "ORR shall not delay the release of a child with one or more disabilities solely because post-release services are not in place before the child's release."

45 C.F.R. § 410.1311; *see also* UACB Policy Guide, § 3.8.4.

III. FACTUAL AND PROCEDURAL BACKGROUND

On January 21, 2026, Petitioners were encountered by U.S. Customs and Border Protection ("CBP") agents. Kronk Decl. at ¶ 28. On January 22, 2026, CBP determined that Petitioners were UAC, and they were transferred into ORR custody pursuant to 8 U.S.C. § 1232(b). *Id.* at ¶ 29. On the same day, ORR performed an initial intake assessment of Petitioners and placed Petitioners with A Greater Love Foster Family Agency, Inc., in Ontario, California. *Id.* at 30.

On January 23, 2026, B.L.G., Petitioners' mother, submitted an Application for Sponsorship to ORR, and, on that date, B.L.G. also submitted an Authorization for Release of Information ("ARI"). *Id.* at ¶ 31. B.L.G. is originally from the San Jose Zocononapan area in Oaxaca, Mexico and only speaks a variant of the Mixteco Bajo language and requires the assistance of an interpreter. *Id.* at ¶ 33.

On January 24, 2024, B.L.G. submitted the petitioners' birth certificates, confirming the relationship between B.L.G. and the petitioners. *Id.* at ¶ 34. On February 26, 2026, ORR unsuccessfully attempted to contact B.L.G. to schedule fingerprinting

[3] "ORR is not required, however, to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity." 45 CFR § 410.1311(e)(2).

as part of the sponsor vetting process and requested an internet background check for B.L.G, which include Public Records checks and Sex Offender Registry checks, conducted through the U.S. Department of Justice National Sex Offender Public Website. *Id.* at ¶ 37.

On March 9, 2026, ORR made efforts to obtain an interpreter to contact B.L.G. However, ORR was unable to obtain an interpreter who spoke B.L.G.'s native language. *Id.* at ¶ 38. On March 10, 2026, ORR established contact with B.L.G., who explained that, two days prior, she relocated to a new address in Santa Maria, California. *Id.* at ¶ 39. On March 11, 2026, ORR contacted B.L.G. to inform her that as she only submitted on paystub to verify her income, additional paystubs were needed. *Id.* at ¶ 40. Additionally, B.L.G. was informed that she only submitted the signature page of the ARI for the identified adult caregiver ("ACG"), R.M.R., her spouse. *Id.*

On March 31, 2026, B.L.G. submitted a copy of her residential lease agreement and her passport. *Id.* at ¶ 41. On April 1, 2026, ORR unsuccessfully attempted to obtain the services of an interpreter to communicate with B.L.G. because no Mixteco Bajo interpreters were available. *Id.* at ¶ 42.

On April 16, 2026, ORR established contact with B.L.G., who informed ORR of difficulty submitting the ACG's ARI electronically. ORR also notified B.L.G. of the need to send additional paystubs to verify her income. *Id.* at ¶ 44. Between April 28, and May 7, ORR made four attempts to set up a time to meet with the sponsor to review the outstanding documents. *Id.* at ¶ 45. Interpreters were utilized for contact on May 5, 2026 and May 7, 2026. *Id.* On May 7, 2026, ORR sent the sponsor a message to inform her that ORR scheduled a call with the interpreter for May 11, 2026. *Id.*

On May 11, 2026, ORR received ACG's ARI, but it was not complete. *Id.* at ¶ 46. ORR, with the assistance of an interpreter, spoke with B.L.G. and provided B.L.G. technical assistance for B.L.G. to sign the ARI and Sponsor Application Packet

("SAP"). *Id.* ORR reviewed the remaining outstanding sponsor vetting requirements with B.L.G. *Id.* On May 21, 2026, ORR requested that B.L.G. sign an updated ARI and SAP, given B.L.G.'s change in address. *Id.* at ¶ 48.

On May 22, 2026, B.L.G. reported having limited internet access and stated that she would try to sign the SAP next week. *Id.* at ¶ 49. On May 26, 2026, ORR contacted B.L.G. to ascertain why she did not complete her scheduled fingerprints; B.L.G. explained that she and the ACG attended the appointment, but the ACG lacked the necessary identification to complete fingerprinting. *Id.* at ¶ 50. B.L.G. agreed to attend any rescheduled fingerprinting; ORR provided technical assistance to B.L.G. and she was then able to sign the updated SAP. *Id.* On May 27, 2026, May 29, 2026, and June 1, 2026, ORR attempted to schedule a fingerprinting appointment for B.L.G. and the ACG. *Id.* at ¶ 51. Ultimately, a fingerprinting appointment was scheduled for June 3, 2026. *Id.*

On June 3, 2026, fingerprinting results for B.L.G. were received. *Id.* at ¶ 52. The results were not disqualifying under UAC Policy Guide § 2.7.4. *Id.* On June 18, 2026, ORR attempted to obtain an interpreter to speak with B.L.G., but there were no Mixteco Bajo interpreters available. *Id.* at ¶ 53. On July 6, 2026, the results of the internet background check form B.L.G. were received . *Id.* at ¶ 55.

On July 9, 2026, a positive home study report was received by ORR. *Id.* at ¶ 56. On July 14, 2026, B.L.G. completed in-person identification verification and a DNA sample was collected. *Id.* at ¶ 57. On July 16, 2026, ORR reviewed the ACG's proof of income documents. *Id.* at ¶ 58. Those paystubs revealed that the ACG has a Social Security Number. *Id.* On previous documents, the ACG did not report having a Social Security number and instead disclosed an Individual Taxpayer Identification Number. *Id.*

On July 16, 2026, ORR attempted to secure an interpreter to speak with B.L.G. *Id.* at ¶ 59. As no interpreter was available, the ORR Division of Sponsor Administration, Federal Field Specialist spoke with B.L.G. in very basic Spanish.

B.L.G. was informed that ORR needed court documents from the ACG being on probation for driving under the influence, proof of the ACG's ITIN and an updated letter of support that lists the ACG's salary. *Id.* On July 17, 2026, the ACG submitted additional paystubs as proof of income. *Id.* at ¶ 60. On July 22, 2026, DNA testing results were received by ORR, which confirmed the relationship between B.L.G. and the petitioners. *Id.* at ¶ 61.

On August 4, 2026, ORR contacted B.L.G., who stated that she was working on obtaining the documents requested by ORR on July 16, 2026. ORR also emailed the Mexican consulate to request verification of the identification documents for B.L.G. and the ACG. *Id.* at ¶ 62. On August 5, 2026, the Mexican consulate responded to ORR's request and confirmed the documents identified were both valid and current. *Id.* at ¶ 63. On August 7, 2026, the sponsor provided court documents and meeting records for the ACG's court-mandated Alcoholics Anonymous meetings. *Id.* at ¶ 64.

On August 11, 2026, ORR submitted a request for a category 1 waiver on behalf of the sponsor due to the sponsor and ACG not possessing policy-compliant proof of identification. *Id.* at ¶ 65. These waiver requests are reviewed on a case-by-case basis upon receipt of a completed sponsor application and once sponsor vetting is completed. *Id.*

IV. LEGAL STANDARD

Section 2241 confers jurisdiction on this court to order the release of any person who is held in the custody of the United States in violation of the "laws . . . of the United States" or the United States Constitution. 28 U.S.C. § 2241(c). The burden rests on the person in custody to prove their detention is unlawful. *See, e.g., Walker v. Johnston*, 312 U.S. 275, 286 (1941).

V. ARGUMENT

1. Administrative Exhaustion Is Appropriate Here As To Petitioners

Petitioners' habeas action is untimely where, as here, the sponsorship applications for Petitioners are 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"); *see also* Kronk Decl. ¶¶ 65-66. 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 B.L.G. remains pending and important vetting requirements necessary to ensure Petitioners' safety and well-being upon release have not yet been completed. Kronk Decl. at ¶¶ 28-66.

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 engaged with B.L.G. and assisting her with the sponsorship process which remains ongoing. Kronk Decl. ¶¶ 28-66. Further, there is no allegation whatsoever that ORR is preventing the potential sponsor for these children from completing outstanding sponsorship requirements, in fact, the record shows that ORR has contacted B.L.G. on multiple occasions to help her complete them. *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 4. 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.

4. ORR's Custody of Petitioners 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 Petitioners entered the United States designated as unaccompanied alien children by DHS. This means that ORR took custody of Petitioners under the HSA. Kronk Decl. ¶ 28. 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 children 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 each 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 be denied because B.L.G. has a pending application with ORR to take custody of them so that ORR can make a considered decision of any kind. Kronk Decl. ¶¶ 28-66.

Considering that the sponsorship application for Petitioners is currently in the sponsor-assessment process, ORR's actions in this matter strictly follow the statutory requirements. As discussed above, ORR is prohibited from releasing Petitioners 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 Petitioners should not be released to their potential sponsors unless and until ORR deems them suitable.

5. Nothing About ORR's Continued Care for Petitioners Violates the Fifth Amendment.

A. Procedural Due Process

Petitioners argue in their Third Claim for Relief that ORR's custody of them constitutes a procedural due process violation. Pet. ¶¶ 124-134. These arguments are unavailing, however, because they are contrary to well-established precedent.

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

The first *Mathews* factor addresses "the private interest that will be affected by the official action." *Id.* at 334. Petitioners point to the interests of "fifteen-year-old and

thirteen-year-old children who have spent more than six months in federal custody and remain separated from their mother despite their mother's ongoing efforts to secure reunification." Dkt. 1 at ¶ 129. These interests do not outweigh the remaining *Mathews* factors under the circumstances of these cases where the sponsorship applications for Petitioners remain pending, and B.L.G. has yet to complete all essential vetting requirements. Kronk Decl. ¶¶ 65-66. Moreover, ORR is actively assisting B.L.G. in completing them. Kronk Decl. ¶¶ 28-66.

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

The second *Mathews* factor looks to "the risk of an erroneous deprivation of such interest through the procedures used," as well as whether further or different process would lead to a more accurate resolution. *Mathews*, 424 U.S. at 335. Notably, in a 2022 decision on cross summary judgment motions in the *Lucas R* litigation, a class action

challenging certain ORR policies and practices relating to the care and custody of unaccompanied alien children, including the sufficiency of procedural protections governing children's release to sponsors, the court found that due process does not require ORR to determine that a sponsor who is a parent or close relative is suitable by a clear and convincing evidentiary standard. *Lucas R v. Becerra*, No. CV 18-5741-DMG (PLAx), 2022 WL 2177454, *28 (C.D. Cal. Mar. 11, 2022).

As the *Lucas R* court recognized, "[d]ue process does not demand that the Court impose procedures that shift the burden to ORR to prove that the sponsor is unfit." *Id.* Instead, acknowledging unique interests and challenges in the immigration context and the broad statutory discretion provided to ORR by the TVPRA for conducting the mandated suitability determinations to ensure safe releases of UACs to potential sponsors, the court stated that, "a minor's rights are adequately protected so long as the minor and sponsor have the opportunity to appeal a denial and submit additional evidence of a sponsor's fitness, if necessary." *Id.*; 8 U.S.C. § 1232(c)(3)(A).[4] The court found that ORR's then-existing hearing policies that at the time applied only to UACs with parent or legal guardian sponsors "provide the fundamental hallmarks of due process, including review by a neutral factfinder who is not involved in the original denial." *See Lucas R*, 2022 WL 2177454, at *26.[5] The court only added that the notice must inform denied potential sponsors that they are entitled to be represented by counsel (at no cost to the Government). *Id.* Notably absent from the *Lucas R* court's reasoning, however, was any mention of a requirement that due process demands a pre-

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[5] On August 30, 2022, in alignment with its partial summary judgment decision, the *Lucas R* court issued a preliminary injunction ordering ORR to extend its notice and appeal processes in the ORR Policy Guide which were previously afforded only to denied sponsors who are parents and legal guardians to close relatives, among other changes to its policies regarding release of children to sponsors. *See Lucas R,*, 2022 WL 3908829, at *1; *cf. J.E.C.M. by and Through His Next Friend Saravia v. Marcos*, 689 F.Supp.3d 180, 195 (E.D. Va. 2023). ORR incorporated those notice and appeal processes in its Foundational Rule. *See* 45 C.F.R. §§ 410.1205, 1206.

determination hearing before a sponsorship decision is ever made. *Id.* Here, the sponsorship application for Petitioners is still pending, and ORR has not made a final decision whether it is safe to release these Petitioners to B.L.G. Kronk Decl. ¶¶ 65-66,

Petitioners have likewise not made any showing of unreasonable delay. The record demonstrates that ORR has engaged with B.L.G. regarding additional required information for sponsoring them and other necessary steps. *Id.*

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

In sum, an application of the *Mathews* factors to the specific circumstances of Petitioners' cases demonstrates that ORR has not violated their or B.L.G.'s procedural due process rights.

B. Substantive Due Process.

In their Second Claim for Relief, Petitioners assert a violation of the substantive component of the Due Process Clause. Dkt. 1 at ¶¶ 113-123. "Substantive due process is far narrower in scope than procedural due process" and requires Petitioners to show not only that they were 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). Petitioners simply cannot make that requisite showing here.

As discussed above, any constitutional liberty interest that the Petitioners' parents have in raising them is "neither absolute nor unqualified," and ORR has countervailing interests in protecting the children from risk of harm upon release, as required by the TVPRA. *JECM*, 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 to contest ORR's release decisions.

Further, to demonstrate that governmental conduct "shocks the conscience," "[Petitioner] must allege conduct that is 'patently egregious' or 'outrageous,' that 'violates the decencies of civilized conduct,' or that fails to 'comport with traditional ideas of fair play and decency." *J.E.C.M*, 352 F.Supp.3d at 586-87 (citing *County of Sacramento v. Lewis*, 523 U.S. 833, 846–49 (1998)) (internal quotation marks and citations omitted in the original). Moreover, "[t]o be sufficiently egregious, the official conduct must do more than produce a harmful or unfortunate result . . . rather, the conduct must be so out of step with contemporary norms and comparable governmental practices that no decent society can tolerate it." *Id.* (citation omitted). Under the circumstances here, where vetting requirements for B.L.G. are still pending and ORR has actively assisted B.L.G. in completing sponsorship requirements, ORR's conduct cannot be said to "shock the conscience." Kronk Decl. at ¶¶ 28-66; *see D.B.*, 826 F.3d at 741 ("[W]hen a state's interference with parental control is predicated on a determination that the parent is unable to provide adequate care for a child, such interference does not contravene substantive due process, at least in the absence of governmental action that shocks the conscience"). Thus, Petitioners' substantive due

process challenge is unavailing.

6. Petitioners' TVPRA Claim Fails.

In their First Claim for Relief, Petitioners assert that ORR violated the TVPRA's requirement that Petitioners be placed in "the least restrictive setting that is in the child's best interests. Dkt. 1 at ¶¶ 104-112. The TVPRA does not provide a standalone cause of action because it does not contain an express waiver of the government's sovereign immunity, and the government has not otherwise consented to suit under that statute. *See* 8 U.S.C. § 1232; *Lane v. Pena*, 518 U.S. 187, 192 (1996); *cf. Adams v. Calhoun Cty.*, No. 18-1867, 2019 WL 3501815, at *2 (6th Cir. 2019) (no waiver of state sovereign immunity); *Mjsilovic v. Okla. Ex rel. Bd. of Regents for Univ. of Okla.*, 841 F.3d 1129, 1132–34 (10th Cir. 2016) (same). Accordingly, any claim that ORR has violated the TVPRA must be evaluated under the APA (§ 706(2)(A)) as a claim that the agency action was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *See Lucas R.*, 2018 WL 7200716, at *7 n.12.

Section 704 of the APA provides for judicial review of "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Here, however, where no statute makes ORR's preliminary sponsor vetting efforts reviewable, the sponsorship application for B.L.G. is being processed, essential vetting requirements are still pending, and ORR has not made its final agency decision regarding the suitability of B.L.G., judicial review of such a claim under the APA is not available. Kronk Decl. ¶¶ 28-66.

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. *See Norton v. Southern Utah Wilderness Alliance*, 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)(A). ORR is actively engaged with B.L.G. in the ongoing sponsorship process but has not yet made the determination whether Petitioners may safely be released. Kronk Decl. at ¶¶ 28-66.

VI. CONCLUSION

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

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