

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

M.M.T.T. a minor,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 26 C 9789
	)	
Markwayne Mullin, Secretary of Homeland	)	Judge Cummings
Security et. al.	)	
	)	
Respondents.	)	

**MEMORANDUM IN OPPOSITION TO
PETITION FOR A WRIT OF HABEAS CORPUS**

This is a habeas case where petitioner M.M.T.T. (a 17-year-old citizen of Guatemala), seeks immediate release from government custody so that he can be placed with his brother, who has a sponsorship application pending. *See generally* Dkt. 1 (“Pet.”). Petitioner’s first encounter with the Office of Refugee Resettlement (“ORR”), an office within the United States Department of Health and Human Services (“HHS”), was on November 7, 2025. *See* Declaration of Toby Biswas (“Biswas Decl.”) ¶ 33. The ORR case manager did a search, found M.M.T.T.’s brother, D.T.T., and labeled him as a Category 2 sponsor (for sibling, half-sibling, grandparents, aunts, uncles and cousins). Biswas Decl. ¶ 35, 15. ORR then reached out to D.T.T. to explain the background-check process to him, as well as the required documentation necessary for sponsorship. *Id.* In early December 2025, the purported brother submitted a New York identification card as proof of identification, a sponsorship application packet, an authorization of release of information (“ARC”), and scheduled a fingerprint appointment. Biswas Decl. ¶ 35–37. ORR then requested a public records and sex-abuse registry check for D.T.T. Biswas Decl. ¶ 36, 37. On January 29, 2026, an HHS field specialist called D.T.T. to go over missing proof of income

and non-compliant adult caregiver (“ACG” or “alternate caregiver”) identification. Biswas Decl. ¶ 38. Specifically, both the sponsor and ACG still needed to provide a social security (“SSN”) / Individual Tax Identification Number (“ITIN”) number and a physical address. *Id.* ¶ 42. On February 4, 2026, D.T.T. withdrew his application from the process as he did not have either an SSN or ITIN to provide. *Id.* ¶ 43. ORR approved the withdrawal on February 9, 2026. *Id.*

At the time of that withdrawal, D.T.T. had already provided his identification card, ARI, internet background check and fingerprints, birth certificate, M.M.T.T.’s birth certificate, and ACG’s identification card. *Id.* ¶ 40. He still needed to submitted his ITIN, the ACG’s ITIN, the ACG’s completed ARI, and proof of income. *Id.* ¶ 44. Additionally, neither D.T.T. nor any ACG had completed DNA testing, a home study, or in-person identification verification. *Id.* The ACG still lacked fingerprinting or a background check. *Id.* On March 24, 2026, M.M.T.T. was transferred to Maryville St. Gabriel for Boys Long Term Foster Care in Des Plaines, Illinois pursuant to UACB Policy Guide § 1.2.6. *Id.* ¶ 45. On April 24, 2026, ORR followed up with D.T.T., who reported that he had begun the process of obtaining his ITIN and was awaiting its issuance. *Id.* ORR told D.T.T. to notify the program once the ITIN was received so that the referral could be submitted. *Id.*

On July 21, 2026, D.T.T. reported that he had obtained his ITIN and was ready to proceed with sponsoring his purported brother. *Id.* ¶ 46. On July 24, 2026, an intake specialist spoke with D.T.T. and confirmed his interest in sponsoring M.M.T.T., conducted an orientation, and D.T.T. submitted a copy of his New York identification. *Id.* ¶ 47. On July 30, 2026, D.T.T. reviewed the sponsorship application packet and ORR advised D.T.T. on the next steps in the sponsorship vetting process. *Id.* ¶ 48–49. In early August 2026, D.T.T. submitted his release form with identification and proof of ITIN to ORR. *Id.* ¶ 52. On August 11 and 12th, the alternative

caregiver submitted a release form with an identification card, D.T.T. uploaded his application form, and ORR received the results of the sponsor's background check. *Id.* ¶¶ 52–55. A home study report was also completed, which leaves an in-person verification, DNA sampling collection, and background check renewal as outstanding requirements before ORR can make a determination. *Id.* ¶¶ 58.

Although this is a daunting process, ORR is conducting it in good faith and M.M.T.T.'s petition should be denied because the agency is complying with applicable statutes and regulations, which make it responsible for the care and custody of Unaccompanied Alien Children ("UACs"), and require it to make placement determinations for all who are in federal custody by reason of their age and immigration status. ORR is acting consistently with the law by requiring the sponsor to undertake a sponsorship application, subject to ORR approval, before releasing M.M.T.T., which should result in a final determination within a matter of weeks. Because the law requires vetting of potential sponsors, the habeas petition here should be denied.

Background

I. Statutory and Regulatory History

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 UAC while they

are in federal custody due to their immigration status, including coordinating their care and placement, ensuring their best interests in custodial decisions and that they are protected from smugglers, traffickers, and others who might seek to victimize and exploit UAC. 6 U.S.C. § 279(b)(1)(A) & (b)(2)(A)(ii).

B. The Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”)

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 C.F.R. 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 UAC and conditionally and partially terminated 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 UAC 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 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 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 *Unaccompanied Alien Children Bureau Policy Guide* (“UAC Policy Guide”) § 1.2, <https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy->

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

guide (last accessed Dec. 12, 2025). ORR also considers several factors relevant to the UAC's placement, including but not limited to: danger to self; danger to the community/others; runaway risk; trafficking in person or other safety concerns; age; and gender. 45 C.F.R. § 410.1103(b).

ORR is required to make and record 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 recently enacted 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 Aug. 28, 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 UAC 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 UAC. *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 Aug. 28, 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 UAC 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 UAC 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. Biswas Decl. ¶ 14. Rather, ORR only takes children into 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. Biswas Decl. ¶ 14. Accordingly, ORR must front-load child safety considerations in its identity verification and sponsor-vetting policies. *Id.*

In light of ORR's obligation to protect 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." UAC Policy Guide § 2.1; Biswas Decl. ¶ 15. There are four categories of potential sponsors: (1) Category 1,

consisting of parents or legal guardians; (2) Category 2A, consisting of siblings, half-siblings, grandparents, immediate relatives (such as aunts, uncles, and cousins) who previously served as a primary caregiver, and other biological relatives and relatives through marriage; (3) Category 2B, consisting of immediate relatives (including biological relatives and relatives through marriage) who did not previously serve as a primary caregiver; (4) Category 3, consisting of other sponsors, such as distant relatives and unrelated adult individuals. UAC Policy Guide § 2.2.1; Biswas Decl. ¶ 15. 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; Biswas Decl. ¶ 18.

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. UAC Policy Guide §§ 2.2.4, 2.5; Biswas Decl. ¶ 16. All potential sponsors must also submit proof of address, income, sponsor-child relationship, and criminal history documents (if applicable). UAC Policy Guide § 2.2.4; Biswas Decl. ¶ 16. 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. UAC Policy Guide § 2.4.2; Biswas Decl. ¶ 18.

Once the assessment of the potential sponsor is complete, the care provider makes a release recommendation to ORR. UAC Policy Guide § 2.7; Biswas Decl. ¶ 27. 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. Biswas

Decl. ¶ 27. ORR makes the final release decision. UAC Policy Guide § 2.7; Biswas Decl. ¶ 27. 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. UAC Policy Guide § 2.7; Biswas Decl. ¶ 27. 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. UAC Policy Guide § 2.7.4; Biswas Decl. ¶ 29.

F. OBBBA's 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:

(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;

OBBA, 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.

II. Factual and Procedural History

As discussed above, M.M.T.T. first entered ORR custody in November 2025, prompting a search for M.M.T.T.'s potential family members or sponsors within this country. Biswas Decl. ¶¶ 31–34. By November 13, 2025, ORR identified D.T.T. as a potential Category 2 sponsor and began the application process. Biswas Decl. ¶ 35. This application process continued until early February 2026, when M.M.T.T.'s purported brother withdrew his application. Biswas Decl. ¶¶ 35–43. On July 21, 2026, D.T.T. then contacted ORR to advise that agency of his renewed interest to sponsor M.M.T.T. because he had obtained an ITIN, so ORR reopened his sponsorship application. Biswas Decl. ¶ 46. The outstanding requirements for D.T.T.'s sponsorship application include an in-person identification verification, DNA sample collection and results, and a background check renewal. Biswas Decl. ¶¶ 58.

The petitioner is bringing six claims: (1) that respondents' requirement for domestic-identity documents violate the TVPRA, Pet. ¶¶ 71–80; (2) that respondents' new identification requirements cause unnecessary delay and violate the TVPRA's release criteria of "prompt" adjudication, Pet. ¶¶ 81–87; (3) that respondent's documentation requirement violates petitioner's due process rights under the Fifth Amendment, family separation, Pet. ¶¶ 88–94; (4) that

petitioner's continued detention is a violation of his Fifth Amendment rights, indefinite detention Pet. ¶¶ 95–101; (5) that petitioner's inability to reunify with his purported brother is a violation of his Fifth Amendment rights, Pet. ¶¶ 102–109; and (6) that respondent's documentation requirements violate the Fifth Amendment Equal Protection Clause, Pet. ¶¶ 106–111; (7) that the prolonged application process violates the Administrative Procedure Act, Pet. ¶¶ 112–125, and (8) the change in policy represents a procedural due process violation under the A.P.A. Pet. ¶¶ 126–129. This court ordered respondents to file their return by August 21, 2026. Dkt. 4. On August 19, 2026, respondents filed an unopposed motion to extend the response time to August 29, 2026 to allow the sponsorship application a chance to be reviewed, and in addition filed a motion to file excess pages, which was partially granted. Dkt. 10–13.

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).

Argument

I. Administrative Exhaustion Is Appropriate Here.

M.M.T.T.'s petition is untimely where, as here, his purported sponsorship application is pending with ORR and near completion. *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”). The exhaustion doctrine both allows agencies to apply their special expertise in interpreting relevant statutes and promotes judicial efficiency. 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 v. Madigan*, 503 U.S. 140, 146 (1992). 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 D.T.T.’s sponsorship application has only been reopened for a month and appears near a final decision. *See* Biswas Decl. ¶ 58 (listing remaining items outstanding for ORR to make a suitability determination).

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. Again, it appears from the petition that M.M.T.T. is nearing completion of review. Further, there is no allegation whatsoever that ORR is preventing petitioner’s alleged brother from filling out or sending in a sponsorship application, in fact, the record shows that specialists met with the purported brother on multiple occasions to help him complete the needed applications and requirements. Biswas Decl. ¶¶ 38, 41, 49–50. Consequently, the court should require exhaustion so that petitioner’s brother can at least complete his sponsorship application with ORR. *See 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.”).

As alluded to above, the statutory and regulatory framework contemplate a robust administrative process to allow ORR to vet sponsorship applicants. *See supra* pp. 9–11. 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.

II. ORR’s Custody of M.M.T.T. 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 M.M.T.T. was admittedly brought into ORR custody in November 2025 *before* he had any parent or recognized legal guardian within the United States. This means that ORR originally took custody of M.M.T.T. when he was a UAC 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 children in its care on their own recognizance, or to just anyone who is willing to sponsor them. 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—which would include assessing sponsors who have difficulty filling out the sponsorship form or designating an alternative caregiver. *See Biswas Decl.* ¶ 11 (stating ORR first “makes a determination that the

proposed custodian is capable of providing for the child's physical and mental well-being.").

As discussed above, the petition should fail because his purported brother has a pending application with ORR to take custody of M.M.T.T. so before ORR can make a considered decision of any kind. Instead of going the direct route contemplated under the statute and regulations, he has attempted to short-circuit that process by going to district court and filing this habeas petition to have the court make its own "best interests" determination against identification requirements that are no longer even an obstacle to D.T.T.'s sponsorship application. But considering the purported brother is currently in the sponsor-assessment process awaiting DNA testing and the like, ORR's actions in this matter are strictly following the statutory requirements. As discussed above, ORR is *prohibited* from releasing M.M.T.T. to 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 M.M.T.T. should not be released by judicial fiat.

III. Nothing About ORR's Continued Care for M.M.T.T. Violates the Fifth Amendment.

Petitioner also argues that ORR's custody of him constitutes a due process violation because he have a liberty interest under the Due Process Clause in remaining together as a family, asserting that his detention as a UAC violates substantive due process because it furthers no legitimate purpose, and the requirement that the sponsor's documents be from the United States serve no legitimate purpose. Pet. ¶¶ 84–111. These arguments, however, are contrary to well-established precedent and ignore the significantly diminished interest that D.T.T. had in not having custody over M.M.T.T. at the time he was placed into ORR's care.

Start with procedural due process. A procedural due process analysis typically considers the three factors articulated by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976). But under that analysis, the petitioner cannot demonstrate that the process that ORR provides for

M.M.T.T. is lacking because ORR has helped the sponsor through the process and the process is almost complete. Biswas Decl. ¶ 58 (noting home study is complete and listing outstanding requirements). Next turn to the procedural due process analysis allegation that separation occurred here because the alleged brother could not submit the proper government issued documents. Pet. ¶ 106–111. In the only Supreme Court case dealing with UACs, the Court held that children such as M.M.T.T. have neither a substantive nor a procedural due process claim regardless of a *Mathews* –balancing analysis. *See Flores*, 507 U.S. at 303–04, 308 (finding no right to an individualized hearing regarding whether a private placement would be in the child’s “best interest,” no substantive due process right to release, and that the procedural due process arguments were “just the ‘substantive due process’ arguments recast in ‘procedural due process’ terms.”). In other words, “[i]nstitutional custody (despite the availability of responsible private custodians) is not unconstitutional in itself.” *Flores*, 507 U.S. at 303–04. This is especially so where, as here, federal law *requires* that a child be placed in ORR’s custody and may not be released to anyone else’s custody unless and until ORR determines it may do so safely, and the integrity of the identity documents ensures that ORR only releases to the properly identified sponsors. 8 U.S.C. § 1232(c)(3). An argument that a sponsor should not have to identify themselves, or quarrel with the adequacy of such identification requirements, undermines the entire point of requiring that a sponsor prove their connection to the UAC.

Finally, and to the extent petitioner presses an amorphous interest in family unity, even parental rights, let alone rights to live with a sibling, can still yield to a government’s interest in investigating situations that may give rise to neglect and abuse, as the law requires ORR to do. *See, e.g.*, 8 U.S.C. § 1232(c)(3)(A). Here a family unity right runs against the caution that the liberty protected by the Due Process Clause should not be “subtly transformed into the policy

preferences of . . . [the] Court.” *Reyna v. Hott*, No. 17-cv-1192, 2018 WL 3551558, at *4–5 (E.D. Va. Mar. 20, 2018). In this regard, “family unity” in the context of civil immigration detention “is an interest that . . . does not exist.” *Reyna v. Hott*, 921 F.3d 204, 211 (4th Cir. 2019); *see also Aguilar v. ICE*, 510 F.3d 1, 21–23 (1st Cir. 2007) (similar); *M.O.G.R. v. Warden*, No. 25-cv-356, 2025 WL 3460936, at *5 (M.D. Ga. Dec. 2, 2025) (similar).

The same is true for petitioner’s equal-protection argument, which boils down to how many foreign nationals in this country already have U.S.-issued documentation, while recent arrivals might not. That argument fails to account for how the political branches regularly make rules for foreign nationals that would not be constitutional if applied to citizens, and that “a host of constitutional and statutory provisions rest on the premise that a legitimate distinction between citizens and aliens may justify attributes and benefits for one class not accorded to the other.” *Mathews v. Diaz*, 426 U.S. 67, 78 (1976). And far from having any rational basis for requiring more thorough documentation, the OBBBA requires as much, and the only other court to have looked at this issue has already stated that “ORR [has] compelling reasons to modify its [identification] policies” based on the I&A “Team’s report identif[ying] serious breaches of ORR’s statutory duty to protect children from trafficking and to identify fraud.” *Angelica S. v. U.S. Dep’t of Health & Human Servs.*, 786 F. Supp. 3d 158, 173 (D.D.C. 2025). Further, it is entirely unclear why M.M.T.T. is so focused on U.S.-issued documentation where, as here, his purported brother has *already provided such documentation* to ORR. Pet. 70–73; Biswas Decl. ¶ 51. It would thus seem that his arguments on this score are moot, as those issues no longer could have any effect on the only sponsorship application now pending vis-à-vis the petitioner.

Conclusion

For the foregoing reasons, the court should deny the petition.

Respectfully submitted,

ANDREW S. BOUTROS
United States Attorney

By: s/ Geoffrey Gilpin _____

GEOFFREY GILPIN
Special Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 371-0994
geoffrey.gilpin@usdoj.gov