UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

T.M.B.A., minor by and through his Next Friend, LAUREN FOUDA, Petitioner, v. ROBERT F. KENNEDY, JR., *et al.*, Respondents.	Civil Action No. 26-CV-7604 (ALC) DECLARATION OF ASSISTANT DEPUTY DIRECTOR TOBY BISWAS

DECLARATION OF TOBY BISWAS

Pursuant to 28 U.S.C. § 1746, I, Toby Biswas, hereby declare under penalty of perjury that the following is true and correct:

1. I am the Assistant Deputy Director for Policy for the Unaccompanied Alien Children Bureau ("UACB"), and manage the Division of Policy Coordination & Intergovernmental Affairs, and the Division of Policy Administration & Legal Affairs within the Office of Refugee Resettlement ("ORR"), an entity within the Administration for Children and Families ("ACF"), U.S. Department of Health and Human Services ("HHS").

2. I have held various roles within ORR since joining the agency in November 2009, and I have held my current role since August 2025. My responsibilities encompass the development and implementation of ORR's policies and procedures concerning the care and custody unaccompanied alien children ("UAC"). In this capacity, I am responsible for ensuring ORR's implementation of and compliance with programmatic policy prerogatives and statutory responsibilities, including those arising under the Homeland Security Act of 2002 ("HSA"), 6 U.S.C. § 279; Trafficking Victims Protection Reauthorization Act of 2008

("TVPRA"), 8 U.S.C. § 1232; and ORR's regulations, including the Foundational Rule, 45 C.F.R. part 410.

3. This declaration is based upon my personal knowledge, information acquired in the course of performing my official duties, information contained in the records of ACF and ORR, and information conveyed to me by current agency employees and contractors.

Care and Placement of Unaccompanied Alien Children in ORR Custody

4. An unaccompanied alien child is a child who has no lawful immigration status in the United States; has not attained 18 years of age; and with respect to whom there is no parent or legal guardian in the United States or no parent or legal guardian in the United States is available to provide care and physical custody. 6 U.S.C. § 279(g)(2).

5. Pursuant to the TVPRA, "any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child." 8 U.S.C. § 1232(b)(3). Therefore, ORR only takes children into its custody upon referral by another federal agency.

6. ORR "shall accept referrals of unaccompanied children, from any department or agency of the Federal Government at any time of day, every day of the year." 45 C.F.R. § 410.1101(a). Further, ORR has no ability to refuse a referral when the referring federal agency transfers custody to it of an individual that the other agency has determined to be a UAC. *See generally* 8 U.S.C. § 1232(b).

7. While "ORR may seek clarification about the information provided by the referring agency as needed", the regulation does not provide for ORR to refuse to accept a referral or demand that the referring agency change the child's designation as a UAC. 45 C.F.R.

§ 410.1101(a); 8 U.S.C. § 1232(b).

8. After a federal department or agency notifies ORR that a child in its custody is a UAC, ORR identifies a program placement for the child. 45 C.F.R. § 410.1101(b). To do so, ORR requests background information from the referring federal agency to assess, among other things, whether the unaccompanied alien child is a danger to himself or others, whether there are any known medical and/or mental health issues, or whether other special concerns or needs are known. ORR uses this information to determine an appropriate placement for the child in the least restrictive setting appropriate for the child's needs. 45 C.F.R. §§ 410.1103(a) & (b); ORR UACB Policy Guide ("UACB Policy Guide"), § 1.3.1, *available at* https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide.

9. 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 the UAC's specific individualized needs. 45 C.F.R. § 410.1102; UACB Policy Guide § 1.2.

10. ORR is not an agency with police powers / criminal law enforcement responsibilities.

11. ORR is not an agency tasked with immigration enforcement.

Policies for an Unaccompanied Alien Child's Safe and Timely Release

12. ORR's goal is to release UACs to suitable sponsors where consistent with its statutory mandate to ensure that placement does not result in danger to UACs, to the community, or risk of flight by any UAC. *See, e.g.*, 6 U.S.C. §§ 279(b)(1), (b)(2)(A)(ii); 8 U.S.C. §§ 1232(c)(1), (c)(3)(A).

13. ORR must balance its responsibility to make and record prompt and continuous

efforts towards release of UACs, *see* 45 C.F.R. § 410.1203(a), with concurrent duties to ensure the safety of releases for both the child and the community.

14. The TVPRA prohibits ORR from releasing a child to a proposed custodian unless ORR first "makes a determination that the proposed custodian is capable of providing for the child's physical and mental well-being," which "shall, at a minimum, include verification of the custodian's identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child." 8 U.S.C. § 1232(c)(3)(A).

15. In addition, under its regulations, which implement the settlement agreement in *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997) (the "*Flores* Settlement Agreement" or "FSA"),[1] ORR assesses all potential sponsors (even when the potential sponsor is a child's parent or legal guardian) before making any release determination, including a review of the potential sponsor's strengths, resources, risk factors, and relationship to the UAC. *See, e.g.*, 45 C.F.R. §§ 410.1201(a); 1202(b) & (c) (implementing Paragraphs 14 and 17 of the FSA, respectively).

16. Further, as part of the sponsor suitability assessment process, "ORR shall evaluate the unaccompanied child's *current* functioning and strengths in conjunction with any risks or concerns such as: . . . (2) History of criminal or juvenile justice system involvement (including evaluation of the nature of the involvement, for example, whether the child was

[1] The *Flores* Settlement Agreement is a consent decree entered into by the former Immigration and Naturalization Service ("INS") governing the apprehension, process, and care and custody of alien minors in its custody. The Department of Homeland Security and HHS are successor agencies to the former INS with respect to various parts of the FSA. However, the FSA has been mostly terminated as to HHS. *See Flores v. Garland*, No. CV 85-4544-DMG (AGRx), 2024 WL 3467715, at *9 (C.D. Cal. June 28, 2024) (conditionally and partially terminating the FSA as to HHS on the basis of ORR's publication of regulations implementing the Agreement). The few remaining paragraphs of the FSA that still apply to HHS do not pertain to ORR release processes (*e.g.*, sponsor vetting processes).

adjudicated and represented by counsel, and the type of offense) or gang involvement." 45 C.F.R. § 410.1202(f) (emphasis added).

17. The sponsor assessment process is particularly important because ORR is not a law or immigration enforcement agency and lacks the authority to hold individuals accountable by reassuming care of the child if the sponsor abuses or neglects a child after the child has been released from ORR custody. Instead, ORR only takes children into its custody upon referral by another federal agency, as described in statute. 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.

18. The process for the safe and timely release of an unaccompanied alien child from ORR custody 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. *See generally* 45 C.F.R. part 410, subpart C. Also, under ORR sub-regulatory guidance, there are three 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; (3) Category 3, consisting of other sponsors, such as distant relatives and unrelated adult individuals. Additionally, ORR classifies cases as Category 4 when no sponsor has been identified. *See* UACB Policy Guide § 2.2.1.

19. A potential sponsor must complete a sponsorship application package to be

considered as a sponsor. 45 C.F.R. § 410.1202. The sponsor must provide unexpired government-issued identification documentation for the sponsor and any other adults living in the household or identified in a sponsor care plan; and, along with any adult living in his or her household, undergo background checks. 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). *Id.* § 2.2.4. ORR does not disqualify potential sponsors based solely on their immigration status or for law enforcement purposes. *Id.* § 2.6.

20. Further, ORR "requires DNA testing to support proof of relationship between a potential sponsor and an unaccompanied alien child where a sponsor purports to be biologically related to the child." *See* UACB Policy Guide § 2.2.4. Refusal to submit a DNA sample "may be grounds for ORR to recategorize the sponsorship as an unrelated Category 3 sponsorship and will require enhanced vetting procedures pursuant to ORR Policy." *Id.*

21. With respect to the background check process, Title VIII, Section 8701(b)(1) of the One Big Beautiful Bill provides ORR funds for 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 residents of the potential sponsor's household; . . . ." (emphasis added).

22. ORR conducts a suitability assessment of the potential sponsor, including a review of the sponsor's strengths, resources, risk factors, and special concerns within the context of each child's needs, strengths, risk factors, and relationship to the sponsor. *See* 45 C.F.R. § 410.1202. Additionally, in certain circumstances a home study, which consists of interviews, a home visit, and a written report containing the home-study case worker's

findings, is performed. *See* 45 C.F.R. § 410.1204; UACB Policy Guide § 2.4.2.

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

24. Additionally, per 45 C.F.R. § 410.1204(b)(2)&(3), ORR requires a home study "[b]efore releasing any child to a non-relative sponsor who is seeking to sponsor multiple children, or who has previously sponsored or sought to sponsor a child and is seeking to sponsor additional children. ORR also requires a home study "[b]efore releasing any child who is 12 years old or younger to a non-relative sponsor." *Id.*

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

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

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

28. Once the assessment of the potential sponsor is complete, the care provider makes a release recommendation. 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. *Id.* ORR makes the final release decision. *Id.* 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. *Id.*

29. In general, ORR denies release if: (1) the potential sponsor is not willing or able to provide for the child's physical or mental well-being; (2) the potential sponsor is not willing to complete the mandatory fingerprint check; (3) the physical environment of the home presents a risk to the child's safety or well-being; or (4) release of the UAC would present a risk to him or herself, the sponsor, household, or community. *Id.* § 2.7.4; 45 C.F.R. § 410.1205.

30. In making placement decisions, ORR "may consider danger to self, danger to the community, and risk of flight." 8 U.S.C. § 1232(c)(2)(A). If the sole reason for the denial of release is a concern that the UAC is a danger to themself or others, ORR shall send the UAC

and their counsel (if the UAC is represented by counsel) a copy of the Notification of Denial and the child may seek an appeal of the denial. 45 C.F.R. § 410.1205(f).

31. Separately, the UAC, or their parent, or legal guardian, can request a risk determination hearing before an independent HHS hearing officer. *See* 45 C.F.R. § 410.1903. All UACs in restrictive placements based on a finding of dangerousness shall be afforded a hearing before an independent HHS hearing officer who determines, through a written decision, whether the UAC would present a risk of danger to self or to the community if released, unless the UAC indicates in writing that they refuse such a hearing. 45 C.F.R. § 410.1903(a). UACs placed in restrictive settings shall receive a written notice of the procedures. *Id.* Additionally, all other UACs in ORR custody may request a hearing to determine, through written decision, whether the UAC would present a risk of danger to themself or to the community if released. 45 C.F.R. § 410.1903(b). However, "[d]eterminations made under [45 C.F.R. § 410.1903] will not compel an unaccompanied child's release; nor will determinations made under [45 C.F.R. § 410.1903] compel transfer of an unaccompanied child to a different placement. Regardless of the outcome of a risk determination hearing or appeal, an unaccompanied child may not be released unless ORR identifies a safe and appropriate placement pursuant to [45 C.F.R. §§ 410.1200-1210]; and regardless of the outcome of a risk determination hearing or appeal, an unaccompanied child may only be transferred to another placement by ORR pursuant to requirements set forth at [45 C.F.R. §§ 410.1100-1109 and 45 C.F.R. §§ 410.1600-1601]." 45 C.F.R. § 410.1903(j).

32. A Notification of Denial letter issued to a potential sponsor will inform the sponsor that they have the right to request an appeal of the denial to the Departmental Appeals Board ("DAB") (as the Assistant Secretary's designee who is a neutral and detached decision

maker) and includes instructions for doing so. 45 C.F.R. § 410.1205(c)(3). In deciding an appeal of a release denial, the DAB's role (as the Assistant Secretary's neutral and detached designee) 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 release was supported by substantial evidence. *See* 45 C.F.R. § 1206; ORR UACB Policy Guide § 2.7.4.

33. The DAB's decision (as the Assistant Secretary's designee) 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. *See* ORR UACB Policy Guide § 2.7.4. 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. *Id.* Similarly, if ORR discovers new information or becomes aware of a change in circumstances of the potential sponsor and/or the unaccompanied alien child, ORR may assess the case anew. *Id.*

34. Additionally, to ensure due process rights and protect the best interests of children in ORR care, a prior release denial of an individual's sponsor application does not mean ORR will automatically deny their future sponsor application. *Id.* "In making a release decision, ORR will consider the totality of circumstances surrounding a sponsor application, that is, all information gathered related to the sponsor's relationship to and ability to care for the child." *Id.*

Case Status for T.M.B.A.

35. T.M.B.A. is a citizen of Ecuador.

36. On April 20, 2026, T.M.B.A was encountered by Customs and Border Protection ("CBP") agents at the southern border near Brownsville, Texas.

37. On April 21, 2026, CBP referred T.M.B.A. to ORR's custody.

38. On April 22, 2026, T.M.B.A. was admitted to ORR's care and custody and placed at Abbott House Shelter, a shelter-level facility in Irvington, New York. A shelter-level placement is the least restrictive type of placement that ORR can make. *See* UACB Policy Guide: Guide to Terms.

39. On April 22, 2026, an ORR Division of Placement Operations "("DPO") Intake Analyst contacted S.M.A.C., T.M.B.A.'s mother, to determine if she would potentially serve as T.B.M.A.'s sponsor.

40. As T.M.B.A.'s mother, S.M.A.C. is designated as a potential Category 1 sponsor.

41. On April 22, 2026, ORR created S.M.A.C.'s Sponsor Application, and sent the application to S.M.A.C.

42. The Sponsorship Application has two parts—Part 1 and Part 2. Part 1 orients the potential sponsor to the sponsorship vetting process and collects basic biographical information about the potential sponsor. Part 2 requires the potential sponsor to complete a sponsor care agreement, a privacy notice and provides instructions for fingerprinting and a letter of designation of care for the UAC.

43. On April 22, 2026, S.M.A.C. completed Part 1 of the Sponsorship Application and returned a photograph with her identification, which was a requirement of Part 1 of the

application. S.M.A.C. was then provided with instructions on how to complete Part 2 of the application.

44. On April 23, 2026, S.M.A.C. completed and signed Part 2 of the application, then signed the Authorization for Release of Information ("ARI") as required.

45. On April 23, 2026, S.M.A.C.'s application was referred to a Division of Sponsorship Administration Federal Field Specialist ("DSA FFS"), for completion of the sponsor vetting process.

46. On April 27, 2026, the DSA FFS contacted the sponsor to explain the sponsor application process and began to review Part 2 of S.M.A.C.'s application. At this time, S.M.A.C and the alternate adult caregiver ("ACG"), P.I.S.G., S.A.M.C.'s partner, still needed to complete several items as part of the required sponsor vetting. Among those were completion of Authorization for Release of Information for the ACG, fingerprint-based background checks, internet-based background checks, including public records checks and sex offender registry checks, submission of identification documents, an in-person identification check appointment, a home study, and submission of a Social Security Number ("SSN") or Individual Taxpayer Identification Number ("ITIN").

47. On May 11, 2026, the care provider staff submitted a referral to the Office of Trafficking in Persons ("OTIP") based on disclosures made by the child.

48. The DSA FFS contacted the sponsor on May 13, 2026, May 21, 2026, and May 27, 2026, to provide updates on the status of the case and to discuss pending sponsor vetting requirements the sponsor needed to complete.

49. On May 20, 2026, S.M.A.C. attended a fingerprint appointment. The results of the fingerprinting were received later that day and revealed no concerns.

50. On May 28, 2026, the DSA FFS referred the case for completion of a home study due to the disclosure of potential physical abuse by S.M.A.C.

51. On June 2, 2026, the home study visit was completed. During the visit, S.M.A.C. disclosed that, in the past, she hit T.M.B.A. with her hand and a belt. S.M.A.C. explained that while she hit T.M.B.A. from ages two to four, she went to therapy and learned non-physical ways to discipline T.M.B.A. As a result, a child-level event report was generated detailing the disclosure and home study worker scheduled a follow-up interview with S.M.A.C.'s daughter.

52. On June 5, 2026, the follow-up home study visit and interview were completed due to the allegations of abuse by T.M.B.A. A positive home study report was issued on June 11, 2026, within ten business days of the home study visit and interview. *See* UACB Policy Guide § 2.4.2 (requiring submission of a home study report to ORR within ten business days of a home study visit).

53. The DSA FFS contacted S.M.A.C. to discuss the case status and pending sponsorship vetting requirements to be completed on June 5, 2026, June 12, 2026, and June 25, 2026. The DSA FFS met with S.M.A.C. on June 25, 2026, for in-person identification verification and for the DNA sample collection appointment.

54. On or around June 29, 2026, OTIP issued an eligibility later based on disclosures made by the child about being forced to work in his home country.

55. On July 1, 2026, an SSD was drafted and the DSA FFS submitted a Category 1 exemption for the ACG's missing SSN/ITIN.

56. The DSA FFS contacted the sponsor to discuss the case status and pending Category 1 exemption items to be completed on July 2, 2026, July 10, 2026, and August 7,

2026. The DSA FFS also contacted the sponsor on July 17, 2026, and August 14, 2026, to provide an update on the Category 1 exemption request.

57. On August 24, 2026, the ORR Director approved the Category 1 exemption for the ACG's missing SSN/ITIN that had been issued on July 1, 2026.

58. On August 27, 2026, a positive sponsor suitability determination ("SSD") was submitted for review by the Assistant Branch Chief. The DSA FFS submitted the SSD the next day.

59. On September 4, 2026, ORR finalized its dangerous assessment, considering the child's previous affiliation with and self-disclosed participation in gang-related activities. Ultimately ORR determined that this child would not pose a danger to himself or the community if released such that ORR must deny release based on a finding of dangerousness. In making this decision, ORR further identified the need to develop a more robust safety plan.

60. On September 4, 2026, the DSA FFS contacted S.M.A.C. to provide her with an update regarding the status of her sponsorship application.

61. On September 8, 2026, ORR approved release of T.M.B.A. to S.M.A.C.

62. On September 9, 2026, at approximately 3:30 a.m., T.M.B.A. was discharged from ORR's custody, and departed New York on a flight to Minnesota, where S.M.A.C. is located, at approximately 6:00 a.m.

63. On September 9, 2026, at approximately 9:00 A.M., T.M.B.A. arrived in Minnesota where he was reunified with S.M.A.C.

64. Because ORR released T.M.B.A. to S.M.A.C., ORR no longer has custody of T.M.B.A. ORR is required to offer T.M.B.A post-release services under the TVPRA, 8 U.S.C. § 1232(c)(3)(B), since T.M.B.A. is a victim of trafficking. T.M.B.A.'s participation in any

post-release services is voluntary.

I hereby declare under the penalty of perjury that the above statements are true and correct to the best of my knowledge.

Executed this 25th day of September 2026

TOBY R. BISWAS -S

Digitally signed by TOBY R. BISWAS -S
Date: 2026.09.25 15:35:20 -04'00'

Toby Biswas
Assistant Deputy Director for Policy
Unaccompanied Alien Children
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