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

15 A.H.C.D.L.C., a minor and G.S.R.J., a
16 minor, by and through Erica Santamaria,
as Next of Friend of Minors,

17 *Petitioners,*

18 v.

19 ANGIE SALAZAR, et al.,

20 *Respondents.*

Case No. 2:26-cv-09996-KS

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

Honorable Karen L. Stevenson
United States Magistrate Judge

1 **I. INTRODUCTION**

2 The first minor petitioner in this matter, A.H.C.D.L.C., is an unaccompanied alien
3 child ("UAC"), as defined at 6 U.S.C. § 279(g)(2), who was referred into the care and
4 custody of the Office of Refugee Resettlement ("ORR") and placed in an ORR care
5 provider facility on May 7, 2026. *See* Declaration of Toby Biswas ("Biswas Decl.") ¶ 39.

6 As discussed at length in the declaration of Toby Biswas, filed herewith, there is
7 an outstanding issue with the sponsorship application of A.H.C.D.L.C.'s current
8 potential sponsor, A.D.L.C.S., who is A.H.C.D.L.C.'s mother, that must be addressed.
9 *See* Biswas Decl. ¶¶ 40-68. In short, A.D.L.C.S. is required to identify an adult caregiver
10 (ACG) who can provide care should A.D.L.C.S. be unable to and provide proof of
11 identification for both A.D.L.C.S. and the ACG. *Id.*, at ¶ 48. The ACG had a foreign
12 passport not compliant with Unaccompanied Alien Children Bureau policy, and though
13 A.D.L.C.S. has a permanent resident identification card, she did not present that card at
14 the in-person identification verification appointment. *Id.*, at ¶ 66. The Division of
15 Sponsor Administration Federal Field Specialist has submitted a waiver, which remains
16 pending. *Id.*, at ¶ 67. Upon receipt of the waiver determination, ORR will promptly make
17 its final sponsor suitability determination and release decision. *Id.*, at ¶ 68.

18 The second minor Petitioner in this matter, G.S.R.J., is a UAC as defined at 6
19 U.S.C. § 279(g)(2), who was referred into the care and custody of ORR and placed in an
20 ORR care provider facility on June 1, 2026. *Id.*, at ¶ 72.

21 The current sponsor of G.S.J.R. is F.M.J.R., who is G.S.J.R.'s mother. *Id.*, ¶ 73.
22 F.M.J.R. and her designated ACG also have a Category 1 exemption pending based on
23 foreign identification documents and the lack of a SSN/ITIN. *Id.*, at ¶¶ 87, 96. Upon
24 receipt of the waiver determination, ORR will promptly make its final sponsor suitability
25 determination and release decision. *Id.*, at ¶ 96.

26 For an unaccompanied alien child, ORR cannot presume that a sponsor applicant,
27 even when a parent or close relative, is able to adequately and properly take care of the
28

1 child's needs. ORR must follow the proper processes and investigation to ensure that the
2 child's release to a sponsor is safe one.

3 Ms. Santamaria's insistence that Petitioners must be released to their parents
4 *immediately* is inappropriate where ORR has not yet made determination regarding
5 suitability and decisions regarding release, and no other potential sponsors have come
6 forward for vetting. The applicable suitability determination process needs to be
7 followed to ensure Petitioners' safety and well-being. Having failed to establish unlawful
8 custody, the Petition should be denied.

9 **II. LEGAL FRAMEWORK**

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

11 In 2002, Congress enacted the HSA, Pub. L. No. 107-296, 116 Stat. 2135 (2002)
12 (codified in relevant part at 6 U.S.C. § 279), which abolished the Immigration and
13 Naturalization Service ("INS") and transferred responsibility for the care and placement
14 of UACs from INS to ORR. 6 U.S.C. §§ 279(a), (b)(1)(A), (g)(2). The HSA defines a
15 UAC as "a child who—(A) has no lawful immigration status in the United States; (B)
16 has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or
17 legal guardian in the United States; or (ii) no parent or legal guardian in the United
18 States is available to provide care and physical custody." 6 U.S.C. § 279(g)(2). Further,
19 it assigns ORR broad authority over the care and custody of UACs while they are in
20 federal custody due to their immigration status, including coordinating their care and
21 placement, ensuring their best interests in custodial decisions and that they are protected
22 from smugglers, traffickers, and others who might seek to victimize and exploit UACs. 6
23 U.S.C. § 279(b)(1)(A) & (b)(2)(A)(ii).

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

25 Congress enacted the TVPRA in 2008 to strengthen protections for UACs and
26 support their safe repatriation or appropriate placement within the United States. The
27 statute, consistent with the HSA, makes HHS responsible for the care and custody of
28 UACs. 8 U.S.C. § 1232(b)(1). It also requires the HHS Secretary to decide that a sponsor

1 “is capable of providing for the child’s physical and mental well-being.” 8 U.S.C.
2 § 1232(c)(3)(A). This safety and suitability determination must “at a minimum, include
3 verification of the custodian’s identity and relationship to the child, if any, as well as an
4 independent finding that the individual has not engaged in any activity that would
5 indicate a potential risk to the child.” *Id.* The TVPRA also requires ORR to prioritize the
6 safety and well-being of UACs while in its care and upon release. One of the methods of
7 doing so as contemplated by the statute is to coordinate with the United States
8 Department of Homeland Security (“DHS”) for available vetting information—including
9 from immigration databases: “Not later than 2 weeks after receiving a request from the
10 Secretary of Health and Human Services, the Secretary of Homeland Security shall
11 provide information necessary to conduct suitability assessments from appropriate
12 Federal, State, and local law enforcement and immigration databases.” 8 U.S.C.
13 § 1232(c)(3)(C). These responsibilities are carried out through cooperative agreements
14 and contracts with care providers under ORR policies and oversight. *See* 8 U.S.C.
15 § 1232(i); 31 U.S.C. § 6305.

16 **C. The Foundational Rule**

17 In April 2024, ORR promulgated the Unaccompanied Children Program
18 Foundational Rule (the “Foundational Rule”), codified at 45 CFR part 410, to establish
19 comprehensive regulations governing its UAC program. The Foundational Rule also
20 implements provisions of the Flores Settlement Agreement (“FSA”) relevant to ORR’s
21 care and custody of UACs and thus led to the conditional and partial termination of the
22 FSA as to ORR in June 2024.¹ *Cf. Reno v. Flores*, 507 U.S. 292 (1993) (upholding INS
23 regulations about the release of UACs to properly vetted sponsors). Effective July 1,
24 2024, the Foundational Rule formalized previously informal procedures, including those
25 related to ORR’s release policies and practices.

26
27 ¹ *See Flores v. Garland*, No. 85-cv-4544, 2024 WL 3467715, at *9 (C.D. Cal. June
28 28, 2024).

1 The Foundational Rule provides that ORR identifies a standard program
2 placement for the UACs upon notification from any federal department or agency that a
3 child in its custody is a UAC and therefore must be transferred to ORR custody. 45
4 C.F.R. § 410.1101(b). ORR then works with the referring federal government
5 department or agency to accept transfer of custody of the UAC, consistent with the
6 statutory and regulatory requirements at 8 U.S.C. § 1232(b)(3) and 45 C.F.R.
7 § 410.1101(c). ORR places each UAC in the least restrictive setting that is in the best
8 interest of the child and appropriate to the unaccompanied alien child's age and
9 individualized needs. 45 C.F.R. § 410.1103(a). ORR may place a child in a shelter
10 facility, foster home or group home (which may be therapeutic), heightened supervision
11 facility or secure facility (including residential treatment centers), or other care facility
12 that can provide for their specific individualized needs, including an out-of-network
13 ("OON") placement (which may be restrictive or non-restrictive). 45 C.F.R. § 410.1102;
14 *see also* ORR UACB Policy Guide § 1.2, [https://acf.gov/orr/policy-](https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide)
15 [guidance/unaccompanied-children-bureau-policy-guide](https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide) (last visited June 20, 2026).
16 ORR also considers several factors relevant to the UAC's placement, including but not
17 limited to: danger to self; danger to the community/others; runaway risk; trafficking in
18 persons or other safety concerns; age; and gender. 45 C.F.R. § 410.1103(b).

19 ORR is required to make and record the prompt and continuous efforts on its part
20 towards release of children in its custody to appropriately vetted sponsors. *See* 45 C.F.R.
21 § 410.1203(a). All individuals seeking to sponsor a child in ORR custody (notably, even
22 a UAC's parent or legal guardian) must undergo the sponsor assessment process,
23 consistent with ORR's statutory responsibilities. *See* 8 U.S.C. § 1232(c)(3)(A) ("an
24 unaccompanied alien child may not be placed with a person or entity unless the
25 Secretary of Health and Human Services makes a determination that the proposed
26 custodian is capable of providing for the child's physical and mental well-being"); 45
27 C.F.R. §§ 410.1201(a), 1202(b). This understanding was further reinforced in the One,
28 Big, Beautiful Bill Act of 2025, Pub. L. No. 119-21, title VIII, subtitle H, section

1 87001(c)(1) (2025) (defining “potential sponsor” as “an individual or entity who applies
2 for the custody of an unaccompanied alien child”).

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

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

15 In December 2022, the U.S. Senate’s Committee on Homeland Security and
16 Governmental Affairs published a report detailing the inadequate treatment of UACs in
17 federal care and the insufficient safeguards to ensure they are not trafficked or abused
18 following their release. *See* United States Senate Committee on Homeland Security and
19 Governmental Affairs, Minority Staff Report, Federal Care of Unaccompanied Children:
20 Minors Remain Vulnerable to Trafficking and Abuse (“Minority Report”),
21 [https://www.govinfo.gov/content/pkg/GOVPUB-Y4_G74_9-PURL-](https://www.govinfo.gov/content/pkg/GOVPUB-Y4_G74_9-PURL-gpo190271/pdf/GOVPUB-Y4_G74_9-PURL-gpo190271.pdf)
22 [gpo190271/pdf/GOVPUB-Y4_G74_9-PURL-gpo190271.pdf](https://www.govinfo.gov/content/pkg/GOVPUB-Y4_G74_9-PURL-gpo190271/pdf/GOVPUB-Y4_G74_9-PURL-gpo190271.pdf) (last visited May. 20,
23 2026). A congressional subcommittee launched its investigation in 2015, following
24 reports that ORR placed eight children with members of a human trafficking ring that
25 forced the children to work on an egg farm for 12 hours a day, six or seven days a week.
26 *See id.* at 26.

27 In the December 2022 report, it was noted that despite the increased number of
28 UACs entering the United States in 2021 and 2022, ORR’s completion of background

1 checks significantly declined from FY 2019. *See id.* at 35–37. Moreover, the report
2 identified the lack of adequate background checks for potential sponsors and the waiver
3 of background check requirements on household members, even when releasing a child
4 to their parent, as areas where additional safeguard measures were necessary. *See id.* at
5 37–45. It was therefore recommended that ORR update the UACB Policy Guide to
6 indicate that if a potential sponsor or household member refuses to comply with required
7 background checks, ORR should prohibit further consideration of the release of a child
8 into their custody until such a check could be completed. *See id.* at v.

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

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

25 The I&A Team also found cases of fraud, abuse, and extortion by prospective
26 sponsors. For example, the I&A Team reported that in late February 2024, an individual
27 sponsor using multiple identities and addresses to sponsor or attempt to sponsor multiple
28 children in Cleveland, Ohio was discovered after an investigation of potential child

1 abuse and trafficking. *See id.* at 7–8. The individual successfully sponsored a 15-year-old
2 female UAC whose allegations of sexual abuse and trafficking led to charges of rape
3 against the sponsor. *See id.* at 7. In another case, the I&A Team found that a woman and
4 her partner attempted to sponsor a total of 15 UACs over a five-year period by using
5 multiple aliases, with the aliases only discovered when the sponsor underwent
6 fingerprinting. *See id.* The I&A Team also found cases of individuals demanding
7 payment to sponsor a UAC. *See id.* at 8. In one scheme, there were 17 reported instances
8 of successful extortion totaling \$27,694. *See id.* Despite this background, ORR’s data
9 revealed that less than 1% of sponsorship applications had been denied in recent years.
10 *See id.*

11 **E. ORR Release Policies and Practices**

12 To carry out its statutory mandate under the HSA and TVPRA, and consistent
13 with the Foundational Rule, ORR has developed policies and procedures for identifying,
14 and conducting suitability assessments of, potential sponsors. These procedures are
15 generally set out in ORR’s publicly available UACB Policy Guide (mentioned above). A
16 full assessment of a potential sponsor’s suitability is particularly appropriate because
17 ORR is not a law or immigration enforcement agency and lacks the authority to hold
18 individuals accountable by reassuming care if the sponsor abuses or neglects a child after
19 a UAC has been released from ORR custody. Biswas Decl. ¶ 15. Rather, ORR only takes
20 children into its custody upon referral by another federal agency, as described in statute.
21 *See* 8 U.S.C. § 1232(b)(3) (requiring, absent exceptional circumstances, that any agency
22 of the federal government transfer the custody of a child to HHS no later than 72 hours
23 after determining that the child is a UAC). In this regard, ORR is also very different
24 from state child welfare agencies, which typically retain such authority post-placement.
25 Biswas Decl. ¶ 15.

26 Accordingly, ORR must front-load child safety considerations in its identity
27 verification and sponsor-vetting policies. *Id.*
28

1 In light of ORR's obligation to protect UACs from smugglers, traffickers, and
2 others who may seek to victimize them, "safe and timely release . . . involves several
3 steps, including: the identification of sponsors; sponsor application; interviews; the
4 assessment (evaluation) of sponsor suitability, including verification of the sponsor's
5 identity and relationship to the child (if any), background checks, and in some cases
6 home studies; and post-release planning." UACB Policy Guide § 2.1; *see also* Biswas
7 Decl. ¶ 17. There are four categories of potential sponsors: (1) Category 1, consisting of
8 parents or legal guardians; (2) Category 2, consisting of siblings, half-siblings,
9 grandparents, or immediate relatives (such as aunts, uncles, and cousins), and other
10 biological relatives and relatives through marriage; and (3) Category 3, consisting of
11 other sponsors, such as distant relatives and unrelated adult individuals. UAC Policy
12 Guide § 2.2.1; Biswas Decl. ¶ 17. ORR (through its care providers) conducts a suitability
13 assessment of the potential sponsor, including a review of the sponsor's strengths,
14 resources, risk factors, and special concerns within the context of each child's needs,
15 strengths, resources, risk factors, and relationship to the sponsor. UAC Policy Guide
16 §§ 2.2.2, 2.4; Biswas Decl. ¶ 20.

17 A potential sponsor must complete a sponsorship application, provide unexpired
18 government-issued identification documentation for the sponsor and any other adults
19 living in the household or identified in a sponsor care plan, and, along with any adult
20 living in his household, undergo a background check. UACB Policy Guide §§ 2.2.4, 2.5;
21 Biswas Decl. ¶ 18. All potential sponsors must also submit proof of address, income,
22 sponsor-child relationship, and criminal history documents (if applicable). UACB Policy
23 Guide § 2.2.4; Biswas Decl. ¶ 18.

24 Additionally, in certain circumstances a home study, which consists of interviews,
25 a home visit, and a written report containing a case worker's findings, is performed.
26 UACB Policy Guide § 2.4.2; Biswas Decl. ¶¶ 20-27.

27 Once the assessment of the potential sponsor is complete, the care provider makes
28 a release recommendation to ORR. UACB Policy Guide § 2.7; Biswas Decl. ¶ 28. The

1 recommendation must take into consideration all relevant information, including the
2 report and recommendations from a home study, if conducted, laws governing the
3 process, and other facts in the case. Biswas Decl. ¶ 28. ORR makes the final release
4 decision. UACB Policy Guide § 2.7; Biswas Decl. ¶ 28. Release decisions include: (1)
5 approve release to sponsor; (2) approve release with post-release services; (3) conduct a
6 home study before a final release decision; (4) deny release; or (5) remand for further
7 information. *Id.* The Policy Guide describes various circumstances under which ORR
8 will or may deny release. *Id.*

9 Generally, ORR denies release if: (1) the potential sponsor is not willing or able to
10 provide for the child's physical or mental well-being; (2) the potential sponsor is not
11 willing to complete the mandatory fingerprint check; (3) the physical environment of the
12 home presents a risk to the child's safety or well-being; or (4) release of the UAC would
13 present a risk to him or herself, the sponsor, household, or community. UACB Policy
14 Guide § 2.7.4; Biswas Decl. ¶ 29; *see also* 45 C.F.R. § 410.1205 (Release decisions;
15 denial of release to a sponsor).

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

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

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

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

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

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

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

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

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

10 G. the results of all background and criminal records checks for the
11 potential sponsor and for all adult residents of the potential sponsor's
12 household, which shall include, at a minimum, an investigation of the public
13 records sex offender registry, a public records background check, and a
14 national criminal history check based on fingerprints.

15 OBBBA, Public Law 119-21, 139 Stat. 72. Section 87001 (July 4, 2025); *see also*
16 Biswas Decl. ¶ 19. These requirements ensure that ORR's obligation to undertake a full
17 assessment of each potential sponsor's suitability is completed before ORR releases the
18 child from its custody.

19 **G. Appeals of ORR Decisions**

20 If ORR denies the application of a parent, legal guardian, or close relative
21 potential sponsor, the denied potential sponsor may appeal that decision through an
22 administrative process. 45 C.F.R. § 410.1206; Biswas Decl. ¶ 26. ORR policy requires
23 that, if ORR denies the sponsor application of a parent, legal guardian, or close relative,
24 the ORR Director, or their neutral and detached designee must send the potential sponsor
25 a Notification of Denial Letter, after receiving all the required information and
26 documentation in a specific case. *See* 45 C.F.R. § 410.1205(c); UACB Policy Guide
27 § 2.7.7; Biswas Decl. ¶ 30. Denied potential sponsors who receive this letter may seek an
28

1 appeal of ORR's denial decision, with a hearing or without a hearing. *Id.* § 2.7.8; Biswas
2 Decl. ¶ 31.

3 In deciding an appeal of a release denial, the Departmental Appeal Board's
4 ("DAB's") role (as the Assistant Secretary's neutral and detached designee who was not
5 involved in the denial decision) is not to substitute its judgment for that of ORR, but to
6 determine whether ORR acted within its statutory authority and applied its regulations
7 and policies reasonably, and whether its decision to deny the Petitioner sponsorship of
8 the UAC was supported by substantial evidence. *See* 45 C.F.R. § 410.1206; UACB
9 Policy Guide § 2.7.4; Biswas Decl. ¶ 32.

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

20 The DAB's decision to affirm or overrule ORR's decision to deny release to a
21 potential sponsor is the final administrative decision of the agency on the application that
22 had been under consideration. UACB Policy Guide § 2.7.8; Biswas Decl. ¶ 33. However,
23 if there is new information or a change in circumstances regarding the reunification
24 application, or regarding the unaccompanied alien child's circumstances, a new
25 reunification application may be submitted that highlights the change(s) and explains
26 why such changes should alter the initial decision. *Id.* Similarly, if ORR discovers new
27 information or becomes aware of a change in the circumstances of the potential sponsor
28 and/or the unaccompanied alien child, ORR may assess the case anew. *Id.*

1 **III. FACTUAL AND PROCEDURAL BACKGROUND**

2 As noted above, Petitioners entered the United States as unaccompanied alien
3 children.

4 **Case Status for A.H.C.D.L.C.**

5 A.H.C.D.L.C. is a citizen of Mexico. Biswas Decl. ¶ 36. On May 5, 2026,
6 A.H.C.D.L.C. was encountered by Customs and Board Patrol ("CBP") agents at the
7 southern border near Lukeville, Arizona. *Id.*, at 37. On May 6, 2026, CBP referred
8 A.H.C.D.L.C. to ORR's custody. *Id.*, at 38. On May 7, 2026, A.H.C.D.L.C. was
9 admitted to ORR's care and custody at Hanna's House in Rancho Cucamonga,
10 California. A shelter-level placement is the least restrictive type of placement that ORR
11 can make. See UACB Policy Guide: Guide to Terms. *Id.*, at ¶ 39. On May 7, 2026,
12 A.D.L.C.S., the mother of A.H.C.D.L.C., was identified to ORR as a potential Category
13 1 sponsor. *Id.*, at ¶ 40.

14 It was identified that A.D.L.C.S. speaks only the Mixteco Bajo language variant
15 and would need the assistance of a translator to communicate with ORR. *Id.*, at ¶ 41. On
16 May 14, 2026, an Intake Specialist ("IS") spoke with A.D.L.C.S. over the telephone. *Id.*,
17 at ¶ 42. The IS informed A.D.L.C.S. that the soonest available appointment for a
18 Mixteco Bajo translator would be May 20, 2026, but A.D.L.C.S. informed the IS that
19 she had a friend who could assist with translation later that afternoon. *Id.* On May 15,
20 2026, the IS called A.D.L.C.S. to inform her a sponsor application was created and
21 offered A.D.L.C.S. training and assistance on how to complete the application. *Id.*, at
22 ¶ 43. A.D.L.C.S. said she was working on the application that night. On the same night,
23 A.D.L.C.S. provided a copy of her Mexican passport and a photograph via text message.
24 *Id.* On May 18, 2026, the IS called A.D.L.C.S. and A.D.L.C.S. stated she was not able to
25 sign and complete the sponsor application due to poor signal making it difficult to access
26 the link to the application. *Id.*, at ¶ 44. A.D.L.C.S. said she would try the link to the
27 application later when she had better signal. *Id.* On May 19, 2026, the IS received a call
28 from A.D.L.C.S.'s phone number. *Id.*, at ¶ 45. An individual from a legal office

1 introduced himself and explained that he was helping A.D.L.C.S. complete the sponsor
2 application. *Id.* The IS, without disclosing information to the individual, spoke to
3 A.D.L.C.S., who had now signed Part 1 of the sponsor application. *Id.*

4 On the same day, the IS called A.D.L.C.S. and confirmed with her an interpreter
5 appointment with Mixteco Bajo for the next day. *Id.*, at ¶ 46. On May 20, 2026, the case
6 was sent to the Division of Sponsor Administration Federal Field Specialist (“DSA
7 FFS”) for assignment. *Id.* On May 26, 2026, the assigned DSA FFS sent an introductory
8 email to A.D.L.C.S. *Id.*, at ¶ 48. The DSA FFS reviewed the ARI and the non-
9 conforming Mexican passport. *Id.* The passport provided by A.D.L.C.S. was non-
10 conforming because it did not contain either an I-551 stamp or Form I-94 or I-94a as
11 required by UACB Policy Guide § 2.2.4. *Id.* ORR scheduled the sponsor for her
12 fingerprinting appointment, and requested Internet Background Checks (“IBC”) for her.
13 *Id.* The DSA FFS requested that A.D.L.C.S. provide information for an adult caregiver
14 (“ACG”), who could provide care and support to A.H.C.D.L.C., in the event A.D.L.C.S.
15 becomes unable and requested the ACG provide identification and an ARI. *Id.*

16 On May 27, 2026, the DSA FFS was informed that A.D.L.C.S. attended her
17 fingerprinting appointment without the required two forms of identification, so the
18 fingerprinting could not be completed. *Id.*, at ¶ 49. The DSA FFS rescheduled
19 A.D.L.C.S.’s fingerprinting appointment and provided email instructions. *Id.* On May 27,
20 2026, the DSA FFS also reminded A.D.L.C.S. that the ARI for the ACG, the IBC for the
21 household member (“HHM”), and proof of address remained pending. *Id.* The DSA FFS
22 also reminded A.D.L.C.S. the next day that these items were still pending. *Id.* The DSA
23 FFS also confirmed that the rescheduled fingerprint appointment was completed but
24 results were pending at that time. *Id.* On May 29, 2026, A.D.L.C.S. provided the DSA
25 FFS with the only document she possessed to prove her address. *Id.*, at ¶ 51. The ARI
26 for the ACG was received, but it was lacking the 18-year address history. *Id.* That ARI
27 was revised and resubmitted. *Id.* On June 1, 2026, the ACG’s ARI was received. *Id.*, at
28

1 ¶ 52. The ACG's IBC was requested, and a fingerprint appointment for the ACG was
2 scheduled for June 3, 2026. *Id.*

3 On June 5, 2026, ORR received the results of the ACG's fingerprinting. *Id.*, at
4 ¶ 53. The DSA FFS attempted to call the ACG after reviewing the fingerprint results but
5 the phone number was not accepting calls. *Id.* The fingerprint results had to be mitigated
6 as the results revealed a driving under the influence ("DUI") charge. *Id.* On June 17,
7 2026, the DSA FFS completed the Sponsor Assessment. *Id.*, at ¶ 54. A.D.L.C.S. reported
8 she currently lives in a three-bedroom home, in which she rents one room within the
9 home. *Id.* A.D.L.C.S. indicated the homeowner also lives in the home but would not be
10 willing to undergo the required vetting process. *Id.* A.D.L.C.S. said she was planning to
11 relocate and will provide updated information when her arrangements have been
12 secured. *Id.* On June 24, 2026, the DSA FFS followed up with A.D.L.C.S. who said she
13 had not yet found a new place to live. *Id.*, at ¶ 55.

14 On July 1, 2026, A.D.L.C.S. called the DSA FFS to notify that she relocated to
15 another residence and would update her sponsorship application to reflect her new
16 address. *Id.*, at ¶ 56. A request was submitted to reopen the application. *Id.* On July 9,
17 2026, the DSA FFS reminded A.D.L.C.S. of the revisions that were still needed for her
18 application. *Id.*, at ¶ 57. On July 13, 2026, the CM followed up with the DSA FFS,
19 informing the DFA FFS that there were continuing language barriers for A.D.L.C.S. and
20 the continued assistance of a Mixteco Bajo interpreter was needed. *Id.*, at ¶ 58. On July
21 16, 2026, ORR received the mitigation documents related to the ACG's fingerprint
22 results along with the ITINs for A.D.L.C.S. and the ACG. *Id.*, at ¶ 59. ORR submitted
23 the sponsor's birth certificate to the Mexican consulate for verification. *Id.* The DSA
24 FFS referred the case for a home study. *Id.* On July 20, 2026, the DSA FFS received the
25 Mexican consulate's verification of A.D.L.C.S.'s identity. *Id.*, at ¶ 60.

26 On July 21, 2026, the home study provider conducted their in-person visit of the
27 sponsor's residence. *Id.*, at ¶ 61. On July 30, 2026, ORR received the home study report
28 back from the home study provider. *Id.*, at ¶ 62. On July 31, 2026, the DSA FFS

1 reviewed the positive home study report and recommendation. *Id.*, at ¶ 63. At this time,
2 the remaining requirements for sponsorship vetting were in-person identification
3 verification, DNA testing, a Division of Vetting (“DOV”) report and a sponsor
4 suitability determination. *Id.* In completing the DOV Report, the Division of vetting
5 coordinates with federal investigative partners to determine if there is an existing open
6 criminal investigation on sponsors that may not have been reflected in fingerprint-based
7 or internet-based background checks. *Id.* The DOV report providers information and
8 recommendations to inform the sponsor suitability determination based on information
9 provided by federal law enforcement partners. *Id.*

10 On August 18, 2026, the DSA FFS received the DOV report for the sponsor,
11 which returned as “clear with a caveat” as A.D.L.C.S. was a possible Entry Without
12 Inspection and potentially inadmissible. *Id.*, at ¶ 64. It was noted that this information
13 did not likely impact A.D.L.C.S.’s suitability as a potential sponsor. *Id.* On August 25,
14 2026, A.D.L.C.S. completed the DNA collection and in-person identification
15 verification. *Id.*, at ¶ 65. On August 31, 2026, the DSA FFS reviewed the DNA results
16 for A.D.L.C.S. *Id.*, at ¶ 66. A Category 1 exemption was submitted for non-conforming
17 identifications for A.D.L.C.S. and the ACG. *Id.* The forms of identification presented for
18 both A.D.L.C.S. and the ACG were not compliant with UACB Policy Guide § 2.2.4. *Id.*
19 The ACG had a foreign passport not compliant with this policy. *Id.* A.D.L.C.S. has a
20 permanent resident identification card, but she did not present that card at the in-person
21 identification verification appointment. *Id.*

22 On August 31, 2026, the DSA FFS submitted a waiver for A.D.L.C.S. not
23 presenting her permanent resident card during the ID verification appointment. *Id.*, at ¶
24 67. Currently, the Category 1 exemption remains pending, along with a sponsor
25 suitability determination. *Id.*, at ¶ 68. Once those are completed, ORR will make a
26 determination as to whether to release A.H.C.D.L.C. to A.D.L.C.S. *Id.*

Case Status for G.S.R.J.

G.S.R.J. is a citizen of El Salvador. Biswas Decl. ¶ 69. On May 31, 2026, G.S.R.J. was encountered by Customs and Board Patrol (“CBP”) agents at the southern border near Fort Hancock, Texas. *Id.*, at ¶ 70. On June 1, 2026, CBP referred G.S.R.J. to ORR’s custody. *Id.*, at ¶ 71. On June 1, 2026, G.S.R.J. was admitted to ORR’s care and custody at A Greater Love Foster Family Agency, Inc., a transitional foster care facility, in Whittier, California. *Id.*, at ¶ 72. On June 1, 2026, F.M.J.R., the mother of G.S.R.J., was identified to ORR as a potential Category 1 sponsor. *Id.*, at ¶ 73. On June 1, 2026, G.S.R.J. was admitted to the Greater Love Foster Family Agency in Whittier. *Id.*, at ¶ 74. On the same day, the IS contacted the potential sponsor who confirmed interest in sponsoring G.S.R.J. *Id.* On June 2, 2026, the F.M.J.R. completed Parts 1 and 2 of the Sponsor Application and the case was referred to DSA for assignment to an FFS. *Id.*, at ¶ 75.

On June 5, 2026, the DSA FFS received the referral. *Id.*, at ¶ 76. Upon review, the DSA FFS determined the ARI was incomplete and notified F.M.J.R. to complete the ARI to continue the sponsorship application process. *Id.* On June 8, 2026, F.M.J.R. completed the ARI and uploaded it to the portal. *Id.*, at ¶ 77. An IBC was requested and a fingerprint appointment was scheduled for the same day. *Id.* On June 17, 2026, the DSA FFS texted the sponsor to remind F.M.J.R. that the application was incomplete. *Id.*, at ¶ 78. On June 25, 2026, an ARI was emailed to an ACG, F.A.R., who is F.M.J.R.’s partner. *Id.*, at ¶ 79. On June 25, 2026, F.M.J.R. was informed that corrections were needed to the sponsorship application and additional forms were required. *Id.*, at ¶ 80. Specifically, F.M.J.R. was required to provide a bank statement, provide proof of income and undergo a background check. *Id.* F.M.J.R. provided a self-attestation letter and supplemental bank statements. *Id.*

On June 30, 2026, the DSA FFS informed F.M.J.R. that corrections to submitted forms were still needed. *Id.*, at ¶ 81. F.M.J.R. reported that she needed to provide her partner’s income as proof of income as she was unable to access her bank statements. *Id.*

1 F.M.J.R. also provided non-compliant Proof of Address, which required additional
2 supervisory review. *Id.* F.M.J.R. provided a medical bill, which did not actually provide
3 proof of her address. *Id.* On July 8, 2026, the ACG's ARI was still pending a signature.
4 *Id.*, at ¶ 82. Additionally, an IBC and fingerprinting for the ACG had not been completed
5 as a result of the incomplete ARI. *Id.* F.M.J.R.'s sponsorship application was under
6 review and still required a signature. *Id.* Once those requirements were completed, the
7 case could be referred for a home study. *Id.*

8 On July 17, 2026, the need for a Category 1 waiver was documented. *Id.*, at ¶ 83.
9 F.M.J.R. provided a foreign identification. *Id.* Additionally, F.M.J.R.'s SSN/ITIN and
10 Proof of Address were still needed and F.M.J.R. was notified about this. *Id.* The ACG's
11 IBC remained under review due to a concern noted in the internet background check
12 results. *Id.* The DSA FFS was to reach out to the ACG for clarification about that
13 incident. *Id.* On July 21, 2026, the DSA FFS provided the case number and date of
14 charge for traffic violations related to the ACG and requested he provide documentation
15 regarding this charge. *Id.*, at ¶ 84. The DSA FFS advised the ACG he could obtain that
16 documentation via the county court website or in-person. *Id.* The ACG claimed the
17 charges were too old and that the court does not keep records for old traffic violations.
18 *Id.*

19 On July 23, 2026, F.M.J.R.'s application was complete and uploaded to the portal.
20 *Id.*, at ¶ 85. The ACG's IBC returned with an undisclosed/determined offense in
21 Riverside County Court. *Id.* The DSA FFS was unable to mitigate the finding via public
22 court record. *Id.* The case will require a Category 1 Waiver due to the Sponsor's foreign
23 identification and lack of SSN/ITIN. *Id.*, at ¶ 86. The Sponsor applied for an ITIN and
24 provided proof of the ITIN application on July 27, 2026. *Id.* On August 6, 2026, a new
25 DSA FFS was assigned to the sponsorship case and contacted F.M.J.R. via an
26 introductory email. *Id.*, at ¶ 87. On August 14, 2026, the DSA FFS uploaded court
27 documentation that F.M.J.R. provided related to the ACG. *Id.*, at ¶ 88. A home study
28 referral was made and a home study report was due to ORR by August 31, 2026. *Id.*, at

¶ 88. On August 20, 2026, the home study provider completed an in-person visit at the sponsor's residence. *Id.*, at ¶ 89.

On August 26, 2026, the DSA FFS was unable to get in touch with F.M.J.R. via phone call, but sent a text message requesting that F.M.J.R. contact the DSA FFS. *Id.*, at ¶ 90. At the time, there was no compliant Proof of Address in the file. *Id.* Additionally, the F.M.J.R.'s birth certificate and provided identification were sent to the consulate for verification. *Id.* On August 28, 2026, the home study report was received by ORR with a positive recommendation. *Id.*, at ¶ 91. On September 1, 2026, the DSA FFS contacted the Sponsor to request the ACG's Social Security Number and a copy of the Social Security card. *Id.*, at ¶ 92. The DSA FFS also again requested valid Proof of Address. *Id.* F.M.J.R. stated that she did not have proof of address as she could not be added to the lease of her residence because she lacked an SSN. *Id.* The DSA FFS requested Proof of Address documenting the ACG's name in the alternative. *Id.*

On September 9, 2026, an appointment for DNA and identification verification was made for the following day. *Id.*, at ¶ 93. Additionally, DNA testing for G.S.R.J. was completed. The results of the DNA tests are currently pending. *Id.* On September 11, 2026, the DSA FFS confirmed F.M.J.R.'s attendance of the DNA testing and in-person identification appointment. *Id.*, at ¶ 94. The DSA FFS submitted the category 1 exemption for approval. *Id.* On September 15, 2026, ORR received the results of the DNA testing, which confirmed the biological relationship between F.M.J.R. and G.S.R.J. *Id.*, at ¶ 95. At present, the category 1 exemption remains pending. *Id.*, at ¶ 96. Once completed, ORR will promptly make a sponsor suitability determination and make a release decision for G.S.R.J. *Id.*

IV. ARGUMENT

1. Administrative Exhaustion Is Appropriate Here

Petitioners' habeas action is untimely where, as here, the sponsorship applications 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.*

1 *Warden*, No. 23 C 50028, 2025 WL 1398979, at *3 (N.D. Ill. May 14, 2025) (petitioners
2 “must exhaust their federal administrative remedies before seeking habeas relief in
3 court”). Still, when Congress has not imposed a statutory administrative exhaustion
4 requirement, “sound judicial discretion governs” whether exhaustion should be required.
5 *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); *see also Gonzalez v. O’Connell*, 355
6 F.3d 1010, 1016 (7th Cir. 2004). The exhaustion doctrine both allows agencies to apply
7 their special expertise in interpreting relevant statutes and promotes judicial efficiency.
8 *Id.* But in making such an assessment, courts must balance the individual and
9 institutional interests involved, considering “the nature of the claim presented and the
10 characteristics of the particular administrative procedure provided.” *McCarthy*, 503 U.S.
11 at 146.

12 The general rule is that parties must exhaust “prescribed administrative remedies
13 before seeking relief from the federal courts.” *Id.* at 144-45. This case falls well within
14 this general rule because the sponsorship application for Petitioners’ sponsors remain
15 pending and important vetting requirements have not yet been completed.

16 There are “two exceptions to the exhaustion requirement First, exhaustion
17 will be excused when resort to such procedures would be futile, and second, the
18 exhaustion requirement is excused when a claimant is wrongfully denied meaningful
19 access to administrative procedures.” *Lieske v. Morlock*, 570 F. Supp. 1426, 1429 (N.D.
20 Ill. 1983). Neither of these exceptions apply. ORR is actively engaging with the potential
21 sponsors for Petitioners and assisting their sponsorship process which remains ongoing.
22 *See generally* Biswas Decl. ¶¶ 36–96. Further, there is no allegation whatsoever that
23 ORR is preventing the potential sponsors for Petitioners from completing outstanding
24 sponsorship requirements. To the contrary, the record shows that specialists met with
25 each potential sponsor on multiple occasions to assist in completing the applications. *Id.*
26 *See Woodford v. Ngo*, 548 U.S. 81, 90–91 (2006) (“Proper exhaustion demands
27 compliance with an agency’s deadlines and other critical procedural rules because no
28

1 adjudicative system can function effectively without imposing some orderly structure on
2 the course of its proceedings.”).

3 The statutory and regulatory framework described above contemplates a robust
4 administrative process to allow ORR to vet sponsorship applicants. *See supra* at 4.
5 Bypassing that process entirely via habeas relief would directly undermine the review-
6 process that the HHS Secretary “shall, at a minimum, verif[y] the custodian’s identity
7 and relationship to the child, if any, as well as [make] an independent finding that the
8 individual has not engaged in any activity that would indicate a potential risk to the
9 child.” 8 U.S.C. § 1232(c)(3)(A) (emphasis added). There is thus little reason why
10 exhaustion should not be required here.

11 **2. ORR’s Custody of Petitioners Is Required by Statute.**

12 In addition, it is worth noting that this case is fundamentally different from a
13 typical habeas petition because “juveniles, unlike adults, are always in some form of
14 custody.” *Flores*, 507 U.S. at 302. Accordingly, “where the custody of the parent or legal
15 guardian fails,” the Supreme Court has held that the “government may (indeed, we have
16 said must) either exercise custody itself or appoint someone else to do so.” *Id.*; *see also*
17 *Schall v. Martin*, 467 U.S. 253, 265 (1984) (noting that a “juvenile’s interest in freedom
18 from institutional restraints . . . must be qualified by the recognition that juveniles, unlike
19 adults, are always in some form of custody” because they “are not assumed to have the
20 capacity to take care of themselves”).

21 In this case, the contrast is even more stark, as Petitioners entered the United
22 States designated as unaccompanied alien children by DHS. This means that ORR took
23 custody of Petitioners under the HSA. And in that circumstance, the TVPRA reinforces
24 and expands upon the government’s responsibility for the care of UACs. Unlike adults in
25 the custody of other agencies, ORR cannot simply release a child in its care on their own
26 recognizance, or to just anyone who is willing to sponsor them. *See* 6 U.S.C.
27 § 279(b)(2)(B). Rather, the TVPRA requires that ORR make a considered decision about
28

1 a child's placement based upon all the circumstances. *See* 8 U.S.C. § 1232(c)(2)(A),
2 (c)(3)(A).

3 As discussed above, the petition should fail because Petitioners' potential sponsors
4 have pending applications with ORR to take custody of them so that ORR can make a
5 considered decision of any kind. Instead of going the direct route contemplated under the
6 statute and regulations, they have attempted to short-circuit that process by going to
7 district court and filing a habeas petition to have the Court make its own "best interests"
8 determination. But considering that the sponsorship applications are currently in the
9 sponsor-assessment process and nearly complete, ORR's actions in this matter strictly
10 follow the statutory requirements. As discussed above, ORR is prohibited from releasing
11 Petitioners to a sponsor's custody until it makes "a determination that the proposed
12 custodian is capable of providing for the child's physical and mental well-being." 8
13 U.S.C. § 1232(c)(3)(A). Accordingly, ORR is acting in accordance with the TVPRA's
14 requirements, and Petitioners should not be released to their potential sponsors unless
15 and until ORR deems them suitable.

16 **3. Nothing About ORR's Continued Care for Petitioners Violates the Fifth**
17 **Amendment.**

18 **A. Procedural Due Process**

19 Petitioners argues in their Third Claim for Relief that ORR's custody of them
20 constitutes a procedural due process violation because they have a liberty interest under
21 the Due Process Clause, asserting that Respondents' policies and actions have deprived
22 them of freedom from confinement without constitutionally sufficient due process and
23 that their further detention bears no reasonable relation to a legitimate government
24 purpose. Petitioners' arguments are unavailing, however, because they are contrary to
25 well-established precedent.

26 A procedural due process analysis typically considers the three factors articulated
27 by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976). That framework
28 requires consideration of the following factors: (1) "the private interest that will be

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

6 The first *Mathews* factor addresses “the private interest that will be affected by the
7 official action.” *Id.* at 334. Petitioners identify two constitutional interests: that of being
8 free from custody and that of a right to family integrity or familial association between
9 the child and her mother who sought to sponsor her. Neither interest outweighs the
10 remaining *Mathews* factors under the circumstances of these cases where the sponsorship
11 applications for Petitioners remain pending, and the potential sponsors have yet to
12 complete an essential vetting requirement. Moreover, ORR is actively assisting the
13 current potential sponsors in completing them.

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

1 “that the proposed custodian is capable of providing for the child’s physical and mental
2 well-being”) (emphasis added).

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

13 As the *Lucas R* court recognized, “[d]ue process does not demand that the Court
14 impose procedures that shift the burden to ORR to prove that the sponsor is unfit.” *Id.*
15 Instead, acknowledging unique interests and challenges in the immigration context and
16 the broad statutory discretion provided to ORR by the TVPRA for conducting the
17 mandated suitability determinations to ensure safe releases of UACs to potential
18 sponsors, the court stated that, “a minor’s rights are adequately protected so long as the
19 minor and sponsor have the opportunity to appeal a denial and submit additional
20 evidence of a sponsor’s fitness, if necessary.” *Id.*; 8 U.S.C. § 1232(c)(3)(A).² The court
21 found that ORR’s then-existing hearing policies that at the time applied only to UAC
22 with parent or legal guardian sponsors “provide the fundamental hallmarks of due
23 process, including review by a neutral factfinder who is not involved in the original

24
25 ² Petitioners misleadingly cites to the *Lucas R* decision for the proposition that the
26 TVPRA at 8 U.S.C. § 1232(c)(2)(A) creates a substantive interest protected by the Due
27 Process Clause by using mandatory language that imposes an obligation on ORR to
28 promptly place a UAC “in the least restrictive setting that is in the best interest of the
child.” Pet. ¶ 72. While the *Lucas R* court did discuss the mandatory language in that
TVPRA section, the court went on say that the statement “does not contain specific
substantive limits on Defendants’ discretion, and in fact uses non-mandatory language to
delineate what factors Defendants ‘may’ consider in making placements.” See *Lucas R.*,
2022 WL 3908829, at *21.

1 denial.” See *Lucas R*, 2022 WL 2177454, at *26.³ The court only added that the notice
2 must inform denied potential sponsors that they are entitled to be represented by counsel
3 (at no cost to the Government). *Id.* Notably absent from the *Lucas R* court’s reasoning,
4 however, was any mention of a requirement that due process demands a pre-
5 determination hearing before a sponsorship decision is ever made. *Id.* Here, the
6 sponsorship applications are still pending, and ORR has not made a final decision
7 whether it is safe to release Petitioners to their prospective sponsors.

8 Petitioners have likewise not made any showing of unreasonable delay. Critically,
9 as the court in *JECM* explained, “[t]he potential exploitation of [UACs] by sponsors
10 underscores the strong interest that ORR has in ensuring the safe release of children in its
11 care.” 689 F.Supp.3d 180, 199 (E.D. Va. 2023) (discussing evidence of incidents such as
12 the trafficking of UACs by their assigned sponsors in Marion, Ohio and a New York
13 Times investigation that supported legitimate governmental concern regarding
14 mistreatment of UAC where children released by ORR across the country had taken
15 dangerous jobs in factories, which had in some cases been encouraged or even required
16 by sponsors).

17 In sum, an application of the *Mathews* factors to the specific circumstances of
18 Petitioners’ case demonstrates that ORR has not violated their or their potential
19 sponsors’ procedural due process rights.

20 **B. Substantive Due Process.**

21 In their Second Claim for Relief, Petitioners assert a violation of the substantive
22 component of the Due Process Clause, arguing that ORR’s continued care of them
23

24 ³ On August 30, 2022, in alignment with its partial summary judgment decision, the
25 *Lucas R* court issued a preliminary injunction ordering ORR to extend its notice and
26 appeal processes in the ORR Policy Guide which were previously afforded only to
27 denied sponsors who are parents and legal guardians to close relatives (but not distant
28 relatives or non-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
CFR §§ 410.1205, 1206.

1 infringes on their and their parents' liberty interest in family integrity and association.
2 Pet. ¶¶ 91–96. “Substantive due process is far narrower in scope than procedural due
3 process” and requires Petitioners to show not only that they were deprived of a
4 constitutionally protected interest, “but also that the action causing the deprivation falls
5 so far beyond the outer limits of legitimate governmental action that no process could
6 cure the deficiency.” *J.E.C.M. by and Through His Next Friend Saravia v. Lloyd*, 352
7 F.Supp.3d 559, 586 (E.D. Va. 2018) (citing *Plyler v. Moore*, 200 F.3d 365, 374 (4th
8 Circ. 1996)) (emphasis, internal quotation marks, and citations omitted in the original)
9 (holding that unaccompanied alien child plaintiffs failed to state a substantive due
10 process claim where they alleged that ORR’s policies and procedures made it
11 increasingly difficult for children to be released from ORR’s care and custody).
12 Petitioners simply cannot make that requisite showing here.

13 As discussed above, any constitutional liberty interest that Petitioners’ parents
14 have in raising them is “neither absolute nor unqualified,” and ORR has countervailing
15 interests in protecting the children from risk of harm upon release, as required by the
16 TVPRA. *JECM*, 352 F.Supp.3d at 587–88 (citing *Martin*, 346 F.3d at 506) (internal
17 quotation marks omitted); 8 U.S.C. § 1232(c)(3)(A). Thus, “the constitutionality of state
18 actions that interfere with family integrity depends on the adequacy of the procedures
19 available to contest those actions.” *Id.* at 588 (citing *D.B.*, 826 F.3d at 741) (internal
20 quotation marks omitted). As shown above, ORR has put in place ample due process
21 procedures in its regulations and policy which enable denied potential sponsors who are
22 parents to contest ORR’s release decisions.

23 Further, to demonstrate that governmental conduct “shocks the conscience,”
24 “[Petitioners] must allege conduct that is ‘patently egregious’ or ‘outrageous,’ that
25 ‘violates the decencies of civilized conduct,’ or that fails to ‘comport with traditional
26 ideas of fair play and decency.’” *J.E.C.M.*, 352 F.Supp.3d at 586–87 (citing *County of*
27 *Sacramento v. Lewis*, 523 U.S. 833, 846–49 (1998)) (internal quotation marks and
28 citations omitted in the original). Moreover, “[t]o be sufficiently egregious, the official

1 conduct must do more than produce a harmful or unfortunate result . . . rather, the
2 conduct must be so out of step with contemporary norms and comparable governmental
3 practices that no decent society can tolerate it.” *Id.* (citation omitted). Under the
4 circumstances here, where vetting requirements for the sponsors are still pending and
5 ORR has actively assisted the prospective sponsors in completing sponsorship
6 requirements, ORR’s conduct cannot be said to “shock the conscience.” *See D.B.*, 826
7 F.3d at 741 (“[W]hen a state’s interference with parental control is predicated on a
8 determination that the parent is unable to provide adequate care for a child, such
9 interference does not contravene substantive due process, at least in the absence of
10 governmental action that shocks the conscience”). Thus, Petitioners’ substantive due
11 process challenge is unavailing.

12 **V. Petitioners’ TVPRA Claim Fails.**

13 In Count One, Petitioners assert that ORR violated the TVPRA’s requirement that
14 Petitioners, as UACs, be placed in “the least restrictive setting that is in the best interests
15 of the child.” Pet. ¶ 87. The TVPRA does not provide a standalone cause of action
16 because it does not contain an express waiver of the government’s sovereign immunity,
17 and the government has not otherwise consented to suit under that statute. *See* 8 U.S.C.
18 § 1232; *Lane v. Pena*, 518 U.S. 187, 192 (1996); *cf. Adams v. Calhoun Cty.*, No. 18-
19 1867, 2019 WL 3501815, at *2 (6th Cir. 2019) (no waiver of state sovereign immunity);
20 *Mjsilovic v. Okla. Ex rel. Bd. of Regents for Univ. of Okla.*, 841 F.3d 1129, 1132–34
21 (10th Cir. 2016) (same). Accordingly, any claim that ORR has violated the TVPRA must
22 be evaluated under the APA (§ 706(2)(A)) as a claim that the agency action was
23 “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”
24 *See Lucas R.*, 2018 WL 7200716, at *7 n.12.

25 Section 704 of the APA provides for judicial review of “[a]gency action made
26 reviewable by statute and final agency action for which there is no other adequate
27 remedy in a court.” 5 U.S.C. § 704. Here, however, where no statute makes ORR’s
28 preliminary sponsor vetting efforts reviewable, the sponsorship applications for the

1 current potential sponsors is being processed, an essential vetting requirement is still
2 pending, and ORR has not made its final agency decision regarding the suitability of
3 each potential sponsor and the safety of releasing Petitioners to them, judicial review of
4 such a claim under the APA is not available.

5 Further, Section 706(1) of the APA permits a reviewing court to “compel agency
6 action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).⁴ The Supreme
7 Court has held that a claim under 5 U.S.C. § 706(1) can only proceed where the plaintiff
8 asserts that an agency failed to take a discrete action that the agency is required to take.
9 *See Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 64 (2004). Accordingly,
10 an agency’s purported delay in acting cannot be unreasonable with respect to action that
11 is not required. *See id.* Here, the TVPRA mandates that ORR release a child only to a
12 sponsor that ORR, in its child welfare experience and judgment, determines will safely
13 care for the UAC. 8 U.S.C. § 1232(c)(3)(A).⁵ ORR is actively engaged with the potential

14 ⁴ While Petitioners do not cite § 706(1), that is the section applicable to claims based
15 on delay.

16 ⁵ Petitioners also argue that Respondents failed to timely process the sponsorship
17 applications of their potential sponsors in accordance with Foundational Rule
18 requirements. *See, e.g.,* Pet. at ¶ 101. This assertion has no merit. Under the *Accardi*
19 doctrine, a court may set aside agency action that is not in compliance with its own
20 regulations or internal procedures. *See Leslie v. Att’y Gen. of U.S.*, 611 F.3d 171, 175 (3d
21 Cir. 2010). But not every agency regulation or procedure falls under the doctrine. Rather,
22 to state a claim for an *Accardi* violation, Petitioners must plausibly allege that a
23 regulation or procedure “regulate[s] the rights and interests of others” and thus is
24 “controlling upon the agency.” *Id.* (citing *Columbia Broad. Sys., Inc. v. United States*,
25 316 U.S. 407, 422 (1942)); *see United States ex rel. Accardi v. Shaughnessy*, 347 U.S.
26 260, 268 (1954). When an agency regulation “does not protect fundamental
27 constitutional or statutory rights,” a violation of the regulation will only warrant judicial
28 relief when there is “a showing of prejudice.” *Leslie*, 611 F.3d at 178 (citing *Chong v.*
INS, 264 F.3d 378, 389 (3d Cir. 2001)).

ORR has followed applicable laws, policies, and regulations in processing each of the
sponsorship applications. These included laws requiring ORR to consider the safety and
suitability of any placement. Notably, 45 C.F.R. § 410.1205(b), cited by Petitioners (*see*
Pet. ¶ 58) refers to adjudication of a “completed” sponsorship application. The record
reflects that the pending applications for the potential sponsors of Petitioners are not yet
complete, and important vetting requirements remain pending. Upon receipt of the
updated background check results, ORR will promptly make its final sponsor suitability
determination and release decision.

Petitioners do not specifically assert a claim under *Accardi*, but any such claim would
(footnote cont’d on next page)

sponsors in the ongoing sponsorship process but has not yet made the determination whether Petitioners may safely be released. Upon receipt of the Category 1 exemptions, ORR will promptly make its final sponsor suitability determinations and release decisions.

VI. Conclusion

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

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Respectfully submitted,

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fail because the remedy for an *Accardi* violation would be “limited to compelling the agency to abide by” the regulation, which it has done here, not to order release. *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 227 n.44 (D.D.C. 2020).