UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

G.T.G.V. and I.R.D.A.,	)	
	)	
Petitioners,	)	
	)	No. 25 C 14700
v.	)	
	)	Judge Harjani
KRISTI NOEM, in her official capacity as Secretary of Homeland Security, *et al.*,	)	
	)	
Respondents.	)	

RESPONDENTS' MEMORANDUM
RESPONSE IN OPPOSITION TO PETITION AND
MEMORANDUM IN SUPPORT FOR PETITION FOR WRIT OF HABEAS CORPUS

ANDREW S. BOUTROS
United States Attorney for
the Northern District of Illinois

JOSHUA S. PRESS
Assistant United States Attorney
219 South Dearborn Street, Fifth Floor
Chicago, Illinois 60604
Tel: (312) 886-7625
e-Mail: joshua.press@usdoj.gov

Introduction

Each year, thousands of unaccompanied alien children ("UACs"), defined as children who have no lawful immigration status, have not attained 18 years of age, and there is either no parent or legal guardian in the United States or no parent or legal guardian in the United States available to provide care and physical custody, arrive in the United States.[1] To deal with this issue, Congress has transferred to the Office of Refugee Resettlement ("ORR"), a component of the United States Department of Health and Human Services ("HHS"), from the former Immigration and Naturalization, the responsibility of caring for and ultimately releasing such children to sponsors, as well as implementing policies with respect to the care and placement of UACs. *See* 6 U.S.C. § 279(b)(1)(A), (C)–(E); *see also* 8 U.S.C. § 1232(c). Congress directs HHS and other agencies, including the United States Department of Homeland Security ("DHS"), to establish policies and programs to ensure that UACs are protected from traffickers and other individuals seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity. *See* 8 U.S.C. § 1232(a)(1). And Congress directs HHS not to place a UACs with a person or entity without making a determination that the proposed custodian is capable of providing for the child's physical and mental well-being, which includes verifying the custodian's identity and relationship to the child, if any, and 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). At the same time, ORR must make and record its prompt and continuous efforts towards the release of any UAC to fit

[1] *See* 6 U.S.C. 279(g)(2); *see also* Congressional Research Svc., *Unaccompanied Alien Children: An Overview* (updated Sept. 5, 2024), https://www.congress.gov/crs-product/R43599 (last accessed Dec. 30, 2025), at 3, Figure I, UAC Apprehensions at the Southwest Border, by Country of Origin; U.S. Customs and Border Protection, *Southwest Border Apprehensions*, https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters (last accessed Dec. 30, 2025) (filter for Border Patrol and UAC).

sponsors. 8 U.S.C. § 1232(c)(2)(A). The competing goals of protection from trafficking, and expediting the release to an appropriate sponsor, require ORR to strike a balance based on the information available to that agency.

This case involves petitioners' challenges to ORR updating its proof-of-identity and proof-of-income requirements during the sponsorship application process, published March 7, 2025, and April 15, 2025, respectively, in response to credible reports of confirmed and suspected trafficking and sponsor fraud. In these updates, ORR tightened the list of specified types of documents that it will accept by potential sponsors to establish their identity; and established acceptable documents to demonstrate a level of income appropriate to care for a UAC. Here, petitioners are petitioning for a writ of habeas corpus to effect their release from ORR custody by bringing a wide variety of claims against these updates. *See generally* Dkt. 1 ("Pet."). But for the reasons explained below, their claims lack merit and, consequently, the petition should be denied.

Background

I. Statutory and Regulatory History

A. The Homeland Security Act

The Homeland Security Act of 2002 ("HSA") transferred duties regarding the care and placement of UACs to ORR. 6 U.S.C. § 279. 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). Thus, once a UAC turns 18, the individual ceases to be a UAC, and ORR has no statutory authority over their care and custody.

The HSA transferred to ORR responsibilities with respect to the care of UACs in federal custody by reason of their immigration status, including coordinating and implementing such care;

ensuring that the interests of each child is considered in decisions and actions relating to their care and custody; identifying a sufficient number of qualified individuals, entities, and facilities to house UACs; implementing policies with respect to the care and placement of UACs, and implementing placement determinations; and, in making placement determinations, consulting with appropriate authorities to ensure that UACs are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity. *Id.* § 279(b)(1), (b)(2)(A)(ii).

B. The Trafficking Victims Protection Reauthorization Act

The next material statute regarding UACs is the Trafficking Victims Protection Reauthorization Act ("TVPRA"), which was enacted in 2008. Pub. L. No. 110-457, 122 Stat. 5044 (2008) (codified as amended at 8 U.S.C. § 1232). It provides in relevant part that HHS must "establish policies and programs to ensure that unaccompanied alien children in the United States are protected from traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity." 8 U.S.C. § 1232(c)(1). Through the TVPRA, Congress entrusts the Secretary of HHS with those responsibilities, as consistent with 6 U.S.C. § 279. 8 U.S.C. § 1232(b)(1); *see also id.* at § 1232(b)(3) (providing that, subject to certain exceptions, any department or agency of the federal government that has a UAC in custody shall transfer the custody of the child to HHS not later than 72 hours after determining that such child is a UAC). ORR must balance that statutory dictate with its obligation to promptly place these minors "in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). Congress also conferred upon the HHS Secretary the responsibility to make a determination 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.*

These responsibilities are largely 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

On April 30, 2024, following notice and comment, ORR promulgated the Unaccompanied Children Program Foundational Rule, codified at 45 C.F.R. Part 410, to establish comprehensive regulations governing its UAC program consistent with its statutory responsibilities. *See* 89 Fed. Reg. 34,384 (Apr. 30, 2024). Effective July 1, 2024, the Foundational Rule codified in regulation standards and practices that previously were described in ORR policies and required by portions of the 1997 *Flores* Settlement Agreement that relate to HHS. In subpart C of the Foundational Rule, 45 C.F.R. §§ 410.1200–410.1210, ORR sets forth policies and procedures used to release, without unnecessary delay, UAC from ORR custody to a vetted and approved sponsor. 45 C.F.R. § 410.1200.

In subpart C, ORR provides that, subject to an assessment of sponsor suitability, when ORR determines that detention of a UAC is not warranted, ORR shall release a child from its custody without unnecessary delay. *See* 45 C.F.R. § 410.1201(a). Still, ORR must release UAC from its custody "[s]ubject to an assessment of sponsor suitability," 45 C.F.R. § 410.1201, which includes "verification of the potential sponsor's identity," 45 C.F.R. § 410.1202(b), and may include "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). Further, "[i]n all cases, ORR shall require background and criminal records checks," *id.*, which may include a criminal history check based on fingerprints. *See* 45 C.F.R. § 410.1202(b)–(c). The Foundational

Rule is silent on specific identity document requirements and the types of documents needed to prove income. *See id.*

During the rulemaking process, many commenters expressed opposition to the Foundational Rule, citing concerns that it did not do enough to prevent child trafficking. *See* 89 Fed. Reg. at 34,389. The Foundational Rule codified ORR's historic practice of screening all UACs for potential trafficking concerns, including during intake assessments, and sponsors assessments. *See id.*; *see also* 45 C.F.R. § 410.1208(a)(2). Similarly, ORR also codified the requirement that ORR refer concerns of human trafficking to ACF's Office on Trafficking in Persons ("OTIP") within 24 hours, in accordance with the reporting requirements in the TVPRA. *See* 45 C.F.R. § 410.1302(c)(8)(ii). OTIP reviews these concerns to assess whether the UAC is eligible for benefits and services. *See* 89 Fed. Reg. at 34,389–90.

D. ORR's Implementation of Release Policies and Practices

ORR is not a law or immigration enforcement agency and thus "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." Declaration of Toby Biswas ("Biswas Decl.") at ¶ 8; *see also* 89 Fed. Reg. at 34,423. In this regard, ORR differs from state child welfare agencies, which typically retain such authority post-placement. Biswas Decl. ¶ 8. To carry out its statutory mandate under the HSA and TVPRA, and its regulatory mandate under the Foundational Rule, ORR developed extensive policies and procedures to protect UAC, memorialized in sub-regulatory guidance and memoranda of agreement. *See id.* at 34,389–91; *see also* ORR Unaccompanied Alien Children Bureau Policy Guide ("Policy Guide"), https://perma.cc/7XKY-LNHN (last accessed Dec. 27, 2025). In response to comments, ORR noted that the Foundational Rule does not cover ORR's entire program and where the Foundational Rule has less detail, more specific

guidance is provided in sub-regulatory guidance on requirements with built-in flexibility for UAC needs. *See id.*

For example, with respect to identifying potential sponsors for UAC, ORR sub-regulatory guidance establishes 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. Policy Guide § 2.2.1; *see also* HHS Office of Inspector General, *Gaps in Sponsor Screening and Follow-up Raise Safety Concerns for Unaccompanied Children* ("OIG Report") at 9, https://oig.hhs.gov/documents/evaluation/3093/OEI-07-21-00250-Complete%20Report.pdf (last accessed Dec. 31, 2025).

A potential sponsor must complete an 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 or her household, undergo a background check. *See* Policy Guide at §§ 2.2.1, 2.2.3, 2.6, 2.7.6; *see also* Biswas Decl. ¶ 10. All potential sponsors must also submit proof of address, sponsor-child relationship, and criminal history documents (if applicable). *See* OIG Report at 5; Policy Guide § 2.2.4; Biswas Decl. ¶ 10. Additionally, in certain circumstances, a home study is conducted, which consists of interviews, a home visit, and a written report containing the home-study case worker's findings. *See* OIG Report at 6; 45 C.F.R. § 410.1204; Policy Guide § 2.4.2; Biswas Decl. ¶ 11.

Once the assessment of the potential sponsor is complete, the care provider makes a release

recommendation to ORR. *See* OIG Report at 6, 8; Policy Guide § 2.7; Biswas Decl. ¶ 12. 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.* 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. *See* Policy Guide Section §§ 2.2.4, 2.7.4, 5.8.2; 45 C.F.R. § 410.1205; Biswas Decl. ¶ 13.

E. Human Trafficking and UAC Sponsorship Fraud

In December 2022, the U.S. Senate's Committee on Homeland Security and Governmental Affairs's published a report detailing the inadequate treatment of UAC 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, *Federal Care of Unaccompanied Children: Minors Remain Vulnerable to Trafficking and Abuse*, https://www.govinfo.gov/content/pkg/GOVPUB-Y4_G74_9-PURL-gpo190271/pdf/GOVPUB-Y4_G74_9-PURL-gpo190271.pdf (last accessed Dec. 27, 2025). 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 Dec. 28, 2025). 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 Team identified instances of children and sponsors using altered birth certificates or unaltered birth certificates belonging to another person. *See id.* at 7. The 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. *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.*

In February 2024, the HHS Office of Inspector General published its findings in *Gaps in Sponsor Screening and Follow Up Raise Safety Concerns for Unaccompanied Children* that:

> 1. In 16% of children's case files, one or more required sponsor safety checks lacked any documentation indicating that the checks were conducted.
>
> 2. For 19% of children who were released to sponsors with pending Federal Bureau of Investigation fingerprint or State child abuse and neglect registry checks, children's case files were never updated with the results.
>
> 3. In 35% of children's case files, sponsor-submitted identification documents contained legibility concerns.
>
> 4. ORR failed to conduct mandatory home studies in two cases and four other cases raise concerns about whether ORR guidance on discretionary home studies should offer more specificity.
>
> 5. In 5% of cases, sponsor records within ORR's case management system were not updated with child welfare outcomes or sponsorship history.

See OIG Report at 1. As a result of these findings, HHS OIG recommended, among other things, that ORR develop additional safeguards to ensure that all safety checks are conducted and documented prior to approving the release of a child to their sponsor. *Id.*

F. Recent Vetting Policy Changes

On January 20, 2025, President Trump ordered HHS, DHS, and the U.S. Department of Justice to take "all appropriate action to stop the trafficking and smuggling of alien children into the United States[.]" Executive Order 14159, *Protecting the American People Against Invasion*, 90 Fed. Reg. 8,443, at 8,447 (Jan. 20, 2025). On February 4, 2025, former Acting Director of ORR, Mellissa Harper, issued a memorandum outlining immediate changes to address ongoing concerns regarding gaps in ORR's sponsor-vetting process, as well as fraud and trafficking. *See* ORR Recommendations at 9–13. Harper noted that in May 2023, the HHS Office of General Counsel conducted an internal investigation to identify which allegations in the Florida grand jury report could be substantiated, where policies were and were not compliant with, and where additional safeguards should be considered. *See id.* at 3. Director Harper highlighted one particularly egregious instance of sponsor fraud in which a potential sponsor, who had tried to sponsor one child by obviously photoshopping himself into a photograph of the child's mother, presented a foreign identification card bearing the name and photograph of another individual in an attempt to establish his identity and sponsor *another* child. *See id.* at 3–4. Director Harper also observed that HHS's investigations of the Florida grand jury allegations revealed other concerning situations, such as a sponsor housing ten people in a two-room apartment and having a UAC sleep in a closet with no ventilation. *See id.* at 5. In February 2025, the average length of care for UAC in ORR custody as of February 2025 was 25.8 days, but that length of time did not permit ORR to conduct adequate sponsor-vetting measures necessary to ensure children are not released to potentially dangerous situations like those detailed in the investigations. *See id.* at 10.

On March 7, 2025, ORR Director of Policy Toby Biswas recommended that ORR update Policy Guide Sections 2.2, 2.4, 7.4, and 5.8.2, and associated procedures, regarding acceptable

documents used in support of sponsorship applications, denials of sponsorship due to fraud concerns, and clarification of fraud-reporting requirements. *See Angelica S. v. U.S. Dep't of Health & Human Servs.*, No. 25-cv-1405, Dkt. 21-4 (D.D.C. May 23, 2025) ("Biswas Memo"). More specifically, because fraud in sponsorship applications poses safety risks to UACs in ORR's care and custody, the Biswas Memo requested expedited approval to combat ongoing fraud and trafficking concerns. *See id.* at 3. The memorandum also observed that the multiple investigations discussed above revealed documented cases of criminals who used fraudulent foreign documents in support of sponsorship applications where the former UACs became victims of crimes by their sponsors, including incidents of trafficking and sexual assault, which resulted in prosecutions. *See id.* at 1. Thus, based on the information received from the above-described investigations, ORR implemented immediate policy changes, which included mandatory enhanced biometric collection and background checks, reassessment of the use of secondary documents that could not be reliably verified as proof of identity, and sponsor presentation of original documents in-person.

The Biswas Memo, in alignment with ORR's statutory and regulatory requirements, 8 U.S.C. § 1232(c)(3)(A); 45 C.F.R. § 410.1202, addresses the identified gaps in the reporting of fraud incidents to HHS. It therefore required ORR to update its UAC Policy Guide Sections 2.2.4, 2.7.4, and 5.8.2. Those updates align the acceptable identity documents for identity verification purposes with the standards used for I-9 (that is, work-authorization) verifications as a safer framework to mitigate reliance on foreign-issued identity documents, and establish clear protocols for detecting, documenting, and responding to fraud, including preventing fraudulent actors from exploiting both the agency and UACs for trafficking or other forms of exploitation. *See id.* at 3.

A significant reason for updating the list of documents was to address concerns related to the ability to authenticate foreign documents used in support of sponsorship applications. *See id.*

ORR reported difficulties authenticating foreign-issued documents, especially in a timely manner. *See id.* ORR consequently had to rely on foreign consulates and embassies, often needing the United States Department of State to authenticate documents issued from outside the United States. *See id.* That process, however, is complicated by international relations (including whether the United States maintains diplomatic relations with certain countries) and the stability of certain foreign states. *See id.* Additionally, ORR was aware of widespread fraud involving the use of such foreign-issued documents. *See id.*

Finally, the new identification requirements provide an exception for Category 1 sponsors on a case-by-case basis. *See id.* at 4.[2]

II. Factual and Procedural History

The petitioners are two unrelated UACs "whom the government detained after their entry into the United States" earlier this year by ORR. Dkt. 10 ("Pet'rs' Br.") at 1; *see also* Pet. ¶¶ 23–24. "G.T.G.V.[is] a 13-year-old girl from Honduras who has been detained since July 2025; and I.R.D.A.[is] a 10-year-old boy from Honduras[ ]detained since June 2025." Pet'rs' Br. at 7–8. "Months ago, both of Petitioners' parents applied to sponsor them," but "[i]n two cases, the parents withdrew their applications after Respondents adopted the new document-identification policy[.]"

---

[2] In April 2025, and in order to further support child safety and mitigate the risk of human trafficking, ORR revised its UAC Policy Guide Sections 2.2.4 and 2.4.1 to include income verification measures. Immigration Policy Tracking Project, *ORR Changes Document Submission Requirements for Unaccompanied Children*, https://immpolicytracking.org/policies/orr-makes-changes-to-acceptable-sponsor-identification-documents-limiting-the-ability-of-noncitizens-to-serve-as-sponsors/ (last accessed Dec. 29, 2025). This change was designed to ensure that sponsors can financially support the UACs they are to be responsible for. *See Angelica S. v. U.S. Dep't of Health & Human Servs.*, No. 25-cv-1405, Dkt. 21-5 (D.D.C. May 23, 2025). Although the petition never discusses ORR's income-verification requirements, respondents felt explaining its existence was necessary because it is mentioned in passing (essentially conflated with the identification vetting focused on in the petition) within petitioners' opening memorandum. *See* Pet'rs' Br. 6, 7, 10.

Id. at 8. Despite having withdrawn their applications, as well as orders "of removal entered against them," "these parents remain eager to sponsor their children." *Id.* To that end, they "have supplied alternate . . . sponsors who are lawful permanent residents or citizens in case the government seeks to enforce the removal orders or collateral attacks on them are unsuccessful." *Id.* But this means the alleged parents are not even applying with ORR to be the petitioners' sponsors. Instead, only friends of family members are applying. Biswas Decl. ¶¶ 15, 20.

Petitioners filed this action on December 3, 2025. *See* Dkt. 1. They generally allege that ORR's identification requirements are unlawful in a host of ways and seek release from ORR custody. *See* Pet. at 15 (Request for Relief). They thus bring six causes of action: (1) a claim arguing that "the government's new identification policy" violates the TVPRA by keeping petitioners in custody for a longer period of time, which violates the Foundational Rule's "best interest" of the child standard, *id.* at ¶¶ 25–31; (2) another claim arguing that respondents are violating the TVPRA whenever any sponsor decision "tak[es] over 10 days to vet the suitability of the Petitioners' sponsors," *id.* at ¶¶ 32–38; (3) a substantive due process claim arguing that "Respondents' refusal to grant custody . . . to their . . . sponsors, based on their lack of U.S.-issued identification, is not a valid reason under the Fifth Amendment," *id.* at ¶¶ 39–42; (4) a procedural due process claim arguing that forcing parents to prove their identity and relationship to petitioners by going through established procedures creates "prolonged detention . . . without adequate procedures to ensure a prompt resolution of their . . . claims to release," *id.* at ¶¶ 43–46; (5) another substantive due process claim arguing that petitioners are facing indefinite detention in ORR-controlled childcare, *id.* at ¶¶ 47–51; and (6) an equal-protection claim arguing that there is no rational basis to only rely on U.S.-issued identification for UAC sponsors, and that requiring such identification treats "undocumented noncitizens [sic] differently than documented

noncitizens [sic],"[3] *id.* at ¶¶ 52–55.[4]

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).

---

[3] Despite whatever good intentions petitioners may have regarding nomenclature, the term "noncitizen" does not equate to "alien" under the Immigration Nationality Act ("INA"), and is misleading because it is over-inclusive. This is because all U.S. citizens are U.S. nationals, but there are some people who are U.S. nationals and are "noncitizens" from American Samoa, the Commonwealth of the Northern Mariana Islands, or Swains Island. The INA does not apply *at all* to these U.S. nationals; who are not citizens.

[4] Petitioners' opening memorandum also summarily argues that ORR's identification policy change violates both the Administrative Procedure Act ("APA") and the doctrine from *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). *See* Pet'rs' Br. at 2,9. Those arguments fail for two reasons. First, they are nowhere mentioned in the petition. Second, and even if the court were to overlook the problem with amending a petition via subsequent briefing, the Supreme Court has made clear that where a foreign national's claims for relief "'necessarily imply the invalidity' of their confinement," those claims "*must* be brought in habeas." *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (per curiam) (emphasis added); *see also id.* at 674 (Kavanaugh, J., concurring) ("[G]iven 5 U.S.C. § 704, which states that claims under the APA are not available when there is another 'adequate remedy in a court,' . . . habeas corpus, not the APA, is the proper vehicle here."); *Muhammad v. Close*, 540 U.S. 749, 750 (2004) (per curiam) ("Challenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus [.]" (citing *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973))). Here, as in *J.G.G.*, habeas is an "adequate remedy" through which the petitioners can challenge their detention. And even if the petitioners' APA and *Accardi* claims had merit (which they do not), the result would be the same relief as that in habeas: release from detention. *Raspoutny v. Decker*, a case involving a habeas petitioner who challenged his detention pursuant to § 1226(a), is instructive. 708 F. Supp. 3d 371 (S.D.N.Y. 2023). In declining to review that petitioner's APA claim, the court held that "petitioner points to no 'statute' that permits 'review[] of the arrest,'" and an arrest is not a "'final agency action for which there is no other adequate remedy in a court'—because the issuance of a writ of habeas corpus under 28 U.S.C. § 2241 would provide an adequate remedy were the Court to find [the petitioner's] custody to be improper." *Id.* at 381 (quoting 5 U.S.C. § 704) (first alteration in original); *see also Lucas v. Fed. Bureau of Prisons*, No. 17 Civ. 1184, 2018 WL 3038496, at *2 (S.D.N.Y. June 19, 2018); *Stern v. Fed. Bureau of Prisons*, 601 F. Supp. 2d 303, 305 (D.D.C. 2009). The petitioners' late-breaking APA and *Accardi* arguments should be treated the same here.

Argument

I. The Court Should Sever and Dismiss I.R.D.A. From This Action.

A. Petitioners Are Misjoined Because Their Claims Involve Distinct Circumstances Surrounding Their Different Parents' Sponsor Applications.

The two components to determine proper joinder are (1) allegations that the claims stem from the same events or series of events; and (2) there must be at least one common question of law or fact linking all claims. And if a court finds that any excess parties are improperly joined, "the court can generally dismiss all but the first named plaintiff without prejudice to the institution of new, separate lawsuits by the dropped plaintiffs." *Cruz v. Bristol-Myers Squibb Co.*, 699 F.3d 563, 569 (1st Cir. 2012). That approach is correct here because each petitioner ostensibly has (or had—it is unclear) separate sponsorship applications submitted to ORR. *See* Pet'rs' Br. at 7–8.

To underscore, Rule 20(a) requires "the *same* . . . series of transactions or occurrences[.]" *Parson v. Allstate Ins. Co.*, No. 22 C 3962, 2023 WL 4999900, at *4 (emphasis added) (N.D. Ill. Aug. 4, 2023). That test is not met because the petitioners are unrelated, came into the United States at different times, are being detained at different childcare facilities, and have had different parents submit and withdraw different sponsorship applications to ORR. *See* Compl. ¶¶ 23–24; Pet'r Br. at 7–8. Such disparate circumstances "suggest that the plaintiffs' attempt at joinder is improper because their claims do not arise from any single occurrence or series of occurrences, and the merits of their claims will turn on the specific circumstances surrounding the adjudication of each of their . . . petitions." *Ahmed v. Miller*, 452 F. Supp. 3d 721, 726 (E.D. Mich. 2021).

Although the plaintiffs present common complaints against ORR's identification policy, they may obtain relief only if they can show that the agency actions affecting their own individual circumstances were unreasonable—an inherently contextual analysis. And when plaintiffs' claims require "individual fact finding," "different witnesses and testimony," and "separate questions . . .

to answer," they are not the same transaction or occurrence and should not be joined. *Martinez v. Haleas*, No. 07 C 6112, 2010 WL 1337555, at *4 (N.D. Ill. 2010).[5] Simply alleging that the same agency takes too long to adjudicate applications is not enough. For example, the Ninth Circuit affirmed a district court's decision to dismiss without prejudice the claims of more than fifty individual plaintiffs seeking relief relating to their separate immigration petitions. That court explained that "the existence of a common allegation of delay, in and of itself, does not suffice to create a common transaction or occurrence." *Coughlin v. Rogers*, 130 F.3d 1348, 1350–51 (9th Cir. 1997). Addressing the second element of Rule 20(a), the court of appeals observed that "each applicant or petitioner presents a different factual situation. Therefore, each must receive personalized attention by the INS and, ultimately, by the Court. Accordingly, there can be no common issues of fact or law." *Id.* Other courts of appeals have ruled along the same lines. *See AF Holdings, LLC v. Does 1–1058*, 752 F.3d 990, 998 (D.C. Cir. 2014) ("To paraphrase an analogy offered by amicus counsel at oral argument, two BitTorrent users who download the same file months apart are like two individuals who play at the same blackjack table at different times. They may have won the same amount of money, employed the same strategy, and perhaps even played with the same dealer, but they have still engaged in entirely separate transactions. And simply committing the same type of violation in the same way does not link defendants together for the purposes of joinder.").

[5] To the extent petitioners attempt to rebut this problem by pointing to how they both disagree the same policy, they neglect to mention how the similar issues are currently being addressed in a class action pending against the same agency policy. *See generally Angelica S. v. U.S. Dep't of Health & Human Servs.*, No. 25-cv-1405 (D.D.C.). Indeed, summary-judgment briefing has already been completed in that matter. *See id.* If simply disagreeing with the same policy were enough to have what should be two separate lawsuits joined, there would be little point of having a class action regarding the same policy.

Here, just like the plaintiffs in *Coughlin*, the petitioners cannot show that their actions arise out of the *same* transaction, occurrence, or series of transactions or occurrences under Rule 20(a). *Cf. Ahmad v. Keisler*, No. 07-cv-2760, 2008 WL 11337699, at *1 (N.D. Ga. July 21, 2008) ("While the remaining Plaintiffs allege that their . . . applications were wrongfully delayed and the reason for the delay is the FBI background check, these commonalities do not establish that the remaining Plaintiffs' claims arise out of the same transaction or occurrence. Each remaining Plaintiff applied for naturalization at a different time. Each remaining Plaintiff's application must be evaluated on its individual merit, and the applications may not be evaluated as a group. The procedural delay associated with the applications is not an aspect of the claims' factual background that supports joinder." (citing *Coughlin*)).

B. Dismissal of I.R.D.A. Is Appropriate.

Respondents recognize that courts sever parties in some cases rather than dismissing them under Federal Rule of Civil Procedure 21. Nevertheless, dismissal is appropriate here because I.R.D.A. can file their own petition without prejudice to their ability to present their own claims. More specifically, dismissal of the improperly joined I.R.D.A. is appropriate in this case because consolidating the cases does not "promote trial convenience and expedite the final determination of disputes," as courts have concluded to be the purpose of Rule 20. *Bailey v. N. Tr. Co.*, 196 F.R.D. 513, 515 (N.D. Ill. 2000). For the former requirement, litigating the circumstances regarding each petitioner's separate amount of time in ORR custody, as compared to the suitability for each separate parent (if their applications are still being pursued with ORR) will hinge on their own individual circumstances—and this would create for an unmanageable trial. Additionally, dismissal would not unduly prejudice I.R.D.A.'s ability to present their claims. This is because I.R.D.A. can re-file an independent petition against the government based on the same claims made in this case. *See Coughlin*, 130 F.3d at 1350. And the facts surrounding I.R.D.A.'s detention vis-

à-vis their relevant sponsor application(s) would be immaterial in determining the reasonableness of what did or did not occur for the lead petitioner—G.T.G.V. Accordingly, the court should sever and dismiss I.R.D.A. from this action.

II. Administrative Exhaustion Is Appropriate Here.

Turning to another threshold point, the petition here is untimely where it is conceded that sponsorship applications with ORR have been withdrawn, and those in the pipeline have not yet been completed. *See* Pet'rs' Br. at 8; *see also Richmond v. Scibana,* 387 F.3d 602, 604 (7th Cir. 2004) (discussing the "common-law exhaustion rule [that] applies to § 2241 actions"); *Baker v. Warden*, No. 23 C 50028, 2025 WL 1398979, at *3 (N.D. Ill. May 14, 2025) (petitioners "must exhaust their federal administrative remedies before seeking habeas relief in court"). Still, when Congress has not imposed a statutory administrative exhaustion requirement, "sound judicial discretion governs" whether exhaustion should be required. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); *see also Gonzalez v. O'Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004). The exhaustion doctrine both allows agencies to apply their special expertise in interpreting relevant statutes and promotes judicial efficiency. *Id.* But in making such an assessment, courts must balance the individual and institutional interests involved, taking into account "the nature of the claim presented and the characteristics of the particular administrative procedure provided." *McCarthy*, 503 U.S. at 146. The general rule is that parties must exhaust "prescribed administrative remedies before seeking relief from the federal courts." *Id.* at 144–45.

This case falls well within this general rule because it is not clear from any of the documentation petitioners have filed before this court whether sponsorship applications are still being pursued for them by their alleged parents, or simply persons whom those alleged parents would prefer to have custody over the petitioners. *See* Pet'rs' Br. at 8. Petitioners attempt to get

around this by making purely policy challenges and characterizing vetting procedures as "presumptive disqualification of sponsors." *Id.* at 10. But there is no such disqualification; only a standardization of documentation, which exists to prevent the fraud and human trafficking that occurred in the past. Moreover, petitioners' *presumption* of what might happen if the alleged parents were to continue with sponsorship allegations proves the point of why the doctrine exists—they do not wish to exhaust anything and instead hope to now bypass the administrative process.

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 ostensibly apply in this instance because the petition makes no argument regarding futility. Further, there is no allegation whatsoever that ORR is preventing anyone from filling out or sending in a sponsorship application. Consequently, the court should require exhaustion in this matter so ORR can actually vet those persons who now seek custody over the petitioners. *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. 5–7. 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). Yet

that is precisely what the petitioners wish to accomplish by filing a habeas claim before their sponsors even finish pursuing applications with ORR. *See* Pet'rs' Br. at 9 n.2 (arguing that petitioners have standing because they "cannot be released *until* their sponsors submit the required information" to ORR (emphasis added)).

III. ORR's Custody of Petitioners Is Required By Statute.

In addition, it is worth noting that this case is fundamentally different from a typical habeas petition because "juveniles, unlike adults, are always in some form of custody." *Reno v. Flores*, 507 U.S. 292, 302 (1993). 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 petitioners were brought into ORR custody before they had any parent or recognized legal guardian come forward to have custody over them. *See* Pet'rs' Br. at 8. This means that ORR took custody of G.T.G.V. and I.R.D.A. when they were UACs 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. 8 U.S.C. § 1321(c). As discussed above, ORR is *prohibited* from releasing the petitioners to their unnamed sponsors' 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). Those sponsors' failure to even finish pursuing a sponsor application prevents ORR from making that determination. Accordingly, ORR is acting in accordance with the TVPRA's requirements, and the petitioners should not be released.

Petitioners' statutory arguments to the contrary are meritless. First, they argue that any policy that might entail better vetting is "presumptively disqualifying" of sponsors and would necessarily take more time. Hence, they argue that identity verification of sponsors is not in the best interests of children. *See* Pet'rs' Br. at 10–12. That is a policy argument and not a legal one. This is borne out by how it is not in children's best interests to be released to human traffickers, either. *See id.* at 12 (relying on a generalized statement that UACs being placed with their parents "would presumably be in their 'best interest'"). No one doubts that children should be with their parents, but the question in this case is about the appropriate amount of vetting *to determine* parenthood (or, failing that, suitability of custody).

Petitioners then argue that allowing only U.S.-issued documentation is contrary to the Foundational Rule, *see id.* at 11, but overlook how that rule uses discretionary, not mandatory, language: "ORR *may* consult with the issuing agency (e.g., consulate or embassy) of the sponsor's identity documentation to verify the validity of the sponsor identity document presented." 45 C.F.R. § 410.1202(b) (emphasis added); *Bouarfa v. Mayorkas*, 604 U.S. 6, 13–14 (2024) (noting how "the word 'may' *clearly* connotes discretion"). Faced with the examples of fraud discussed above, ORR's policy change here to require identification documentation the agency can trust is a rational choice. Nothing within the TVPRA or Foundational Rule mandates any less.

Second, petitioners' argument that ORR's identification policy violates the TVPRA's command to ensure prompt release to appropriate sponsors simply begs the same question of who

is an appropriate sponsor. And here again, petitioners rely upon a generalization that "ORR shall *ordinarily* adjudicate a sponsorship application with [sic] 10 days." Pet'rs' Br. at 12 (emphasis added) (citing 45 C.F.R. § 410.1205(b)). This regulatory requirement of what should "ordinarily" occur fails to contemplate situations of inadequately documented applications. In such circumstances, and under 8 U.S.C. § 1232(c)(3)(A), ORR is not required to release UACs to potential sponsors who have not actually shown to the agency that they are, in fact, proper custodians of each child.[6]

This same problem is why it is not 10 days and the agency must then release a UAC to anyone who comes forward. *Cf. Flores*, 507 U.S. at 303 ("holding that no "child has a constitutional right not to be placed in a decent and humane custodial institution if there is available a responsible person unwilling to become the child's legal guardian but willing to undertake temporary legal custody"). Instead, the 10-day rule of thumb contemplated by § 410.1205(b) for prompt release to an appropriate sponsor does not kick in until a sponsorship application has been completed and submitted to the agency. As discussed above regarding administrative exhaustion, there is nothing to suggest that the 10-day clock has even started where the sponsors have not yet finished their applications.

IV. ORR's Custody Over the Petitioners is Constitutional.

Petitioners also argue that ORR's current custody of them constitutes a due process and equal protection violation because it involves family unity, can create for so-called indefinite detention, lacks procedural safeguards prior to placing UACs into ORR custody, and disfavors foreign nationals who do not have U.S.-issued identification without a valid basis. Pet. ¶¶ 39–55.

---

[6] Sponsors must demonstrate that they are capable of providing for the child's physical and mental well-being, which includes verification of the custodian's identity and relationship to the child.

These arguments, however, are contrary to well-established precedent and ignore the significantly diminished interest that third parties (such as the intended sponsors involved in this case) have in not having custody over other people's children.

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 petitioners cannot demonstrate that the process that ORR provides to them is lacking because no one has even finished trying to go through that process. Biswas Decl. ¶¶ 15–18, 20–22. Next turn to the argument that separation is occurring here without adequate procedural safeguards, or that there is indefinite detention. In the only Supreme Court case dealing with UACs, the Court held that children such as petitioners (where the private placement sought is with neither a parent nor close relative) 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. And there is no indefinite detention where (as discussed above) ORR is required to promptly adjudicate completed sponsor applications. That is not indefinite because (as alluded to above) the timing depends on a sponsorship application to be submitted. Once that is finished, having ORR making swift safety determinations is *required* where, as here, ORR may not release UACs to anyone else's custody unless and until ORR determines it may do so safely. 8 U.S.C. § 1232(c)(3).

Similarly, and to the extent petitioners press an amorphous interest in family unity from

cases dealing entirely with a substantive due process interest for U.S.-based families, parental rights 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, the petitioners' efforts to rely on "an overly generalized 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). This is why, for example, even having U.S. citizen children in the United States will not be a valid basis to avoid deportation. *Cf. INS v. Jong Ha Wang*, 450 U.S. 139, 144–45 (1981) (per curiam) (noting how "the Act commits the definition [of 'extreme hardship'] in the first instance to the Attorney General and his delegates, and their construction and application of this standard should not be overturned by a reviewing court simply because it may prefer another interpretation of the statute").

Finally, the petitioners' equal-protection argument boils down to how many foreign nationals in this country already have U.S.-issued documentation, while other foreign nationals might not have such documents. *See* Pet'rs' Br. at 18–19. That argument fails to account for how the political branches regularly makes 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). Indeed, the *Diaz* court even noted how "the class of aliens is itself a heterogeneous multitude of persons with a wide-

ranging variety of ties to this country." *Id.* at 78–79. In other words, petitioners' argument alleging that some "noncitizens" are treated differently than other "noncitizens" says nothing as to whether there is anything unlawful going on. *See id.* at 80 ("The fact that an Act of Congress treats aliens differently from citizens does not in itself imply that such disparate treatment is 'invidious.'").

Moreover, far from having any rational basis for this policy change, 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). In short, ORR's concern about preventing child trafficking and fraud within the child-sponsor program is a rational basis to support the agency's identification requirements.

Conclusion

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

Respectfully submitted,

ANDREW S. BOUTROS
United States Attorney

By: s/ Joshua S. Press

JOSHUA S. PRESS
Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 886-7625
joshua.press@usdoj.gov