UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

A.N.P.S., a minor, by and through Next Friend of Kin, N.C.S.E.,	)	
Petitioner,	)	
v.	)	No. 25 C 14778
ANGIE SALAZAR, in her official capacity as Acting Director of the Office of Refugee Resettlement (ORR), *et al.*,	)	Judge Rowland
Respondents.	)	

MEMORANDUM IN OPPOSITION TO
PETITION FOR A WRIT OF HABEAS CORPUS

This is a habeas case where petitioner A.N.P.S. (a 17-year-old citizen of Honduras), seeks immediate release from government custody so that he can be placed with N.C.S.E. *See generally* Dkt. 1 ("Pet."). On November 7, 2025, he was detained by U.S. Customs and Border Protection ("CBP") and, from there, was placed into a facility controlled by the Office of Refugee Resettlement ("ORR"), an office within the United States Department of Health and Human Services ("HHS"). Pet. ¶ 1. This was because, as a minor without parents in this country available to provide care and physical custody, he "was designated" as an Unaccompanied Alien Child ("UAC") "and placed in the custody of" ORR." *Id.* at ¶ 18. To that end, "Petitioner remains detained in ORR custody at the Heartland Int. Children's Residential Center in Chicago, Illinois." *Id.* at ¶ 21. To remedy his detention, N.C.S.E. went to "the Cook County Circuit Court" on November 20, 2025, in order to have N.C.S.E. "appointed . . . as legal guardian of the Petitioner *nunc pro tunc* to February 1, 2023." *Id.* It appears that was the extent of what N.C.S.E. was willing to do, though, as no sponsorship application has been made with ORR yet. ORR is thus complying with applicable statutes and regulations, which make it responsible for the care and

custody of unaccompanied alien children ("UAC"), which includes making placement determinations for all who are in Federal custody by reason of their immigration status. ORR is acting consistently with the law by requiring N.C.S.E. to submit a sponsorship application, subject to ORR approval, before releasing A.N.P.S., and the habeas petition should be denied.

Background

I. Statutory and Regulatory History

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

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

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

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

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

C. The Foundational Rule

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

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

procedures, including those related to ORR's release policies and practices.

The Foundational Rule provides that ORR identifies a standard program placement for the UAC upon notification from any federal department or agency that a child in its custody is a UAC and therefore must be transferred to ORR custody. 45 C.F.R. § 410.1101(b). ORR then works with the referring federal government department or agency to accept transfer of custody of the UAC, consistent with the statutory requirements at 8 U.S.C. § 1232(b)(3) and 45 C.F.R. § 410.1101(c). ORR places each UAC in the least restrictive setting that is in the best interest of the child and appropriate to the unaccompanied child's age and individualized needs. 45 C.F.R. § 410.1103(a). ORR may place a child in a shelter facility, foster home or group home (which may be therapeutic), heightened supervision facility or secure facility (including residential treatment centers), or other care facility that can provide for their specific individualized needs, including an out-of-network ("OON") placement (which may be restrictive or non-restrictive). 45 C.F.R. § 410.1102; *see also ORR Unaccompanied Alien Children Bureau Policy Guide* ("UAC Policy Guide") § 1.2, https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide (last accessed Dec. 12, 2025). ORR also considers several factors relevant to the UAC's placement, including but not limited to: danger to self; danger to the community/others; runaway risk; trafficking in person or other safety concerns; age; and gender. 45 C.F.R. § 410.1103(b).

ORR is required to make and record the prompt and continuous efforts on its part towards release of children in its custody to appropriately vetted sponsors. *See* 45 C.F.R. § 410.1203(a). All individuals seeking to sponsor a child in ORR custody (notably, even a UAC's parent or legal guardian) must undergo the sponsor assessment process, consistent with ORR's statutory responsibilities. *See* 8 U.S.C. § 1232(c)(3)(A) ("an unaccompanied alien child may not be placed with a person or entity unless the Secretary of Health and Human Services makes a determination

that the proposed custodian is capable of providing for the child's physical and mental well-being"); 45 C.F.R. § 410.1201(a), 1202(b). This understanding was further reinforced in the recently enacted One Big Beautiful Bill Act of 2025, Pub. L. No. 119-21, title VIII, subtitle H, section 87001(c)(1) (2025) (defining "potential sponsor" as "an individual or entity who applies for the custody of an unaccompanied alien child").

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

D. ORR Release Policies and Practices

To carry out its statutory mandate under the HSA and TVPRA, and consistent with the Foundational Rule, ORR has developed policies and procedures for identifying, and conducting suitability assessments of, potential sponsors. These procedures are generally set out in ORR's publicly available UAC Policy Guide (mentioned above). A full assessment of a potential sponsor's suitability is particularly appropriate because ORR is not a law or immigration enforcement agency and lacks the authority to hold individuals accountable by reassuming care if the sponsor abuses or neglects a child after a UAC has been released from ORR custody.

Declaration of Toby Biswas ("Biswas Decl.") at ¶ 7. Rather, ORR only takes children into its custody upon referral by another federal agency, as described in statute. *See* 8 U.S.C. § 1232(b)(3) (requiring, absent exceptional circumstances, that any agency of the federal government transfer the custody of a child to HHS no later than 72 hours after determining that the child is a UAC). In this regard, ORR is also very different from state child welfare agencies, which typically retain such authority post-placement. Biswas Decl. ¶ 7. Accordingly, ORR must front-load child safety considerations in its identity verification and sponsor-vetting policies. *Id.*

In light of ORR's obligation to protect UACs from smugglers, traffickers, and others who may seek to victimize them, "safe and timely release . . . involves several steps, including: the identification of sponsors; sponsor application; interviews; the assessment (evaluation) of sponsor suitability, including verification of the sponsor's identity and relationship to the child (if any), background checks, and in some cases home studies; and post-release planning." UAC Policy Guide § 2.1; Biswas Decl. ¶ 8. There are four categories of potential sponsors: (1) Category 1, consisting of parents or legal guardians; (2) Category 2A, consisting of siblings, half-siblings, grandparents, immediate relatives (such as aunts, uncles, and cousins) who previously served as a primary caregiver, and other biological relatives and relatives through marriage; (3) Category 2B, consisting of immediate relatives (including biological relatives and relatives through marriage) who did not previously serve as a primary caregiver; (4) Category 3, consisting of other sponsors, such as distant relatives and unrelated adult individuals. UAC Policy Guide § 2.2.1; Biswas Decl. ¶ 8. ORR (through its care providers) conducts a suitability assessment of the potential sponsor, including a review of the sponsor's strengths, resources, risk factors, and special concerns within the context of each child's needs, strengths, resources, risk factors, and relationship to the sponsor. UAC Policy Guide §§ 2.2.2, 2.4; Biswas Decl. ¶ 10.

A potential sponsor must complete a sponsorship application, provide unexpired government-issued identification documentation for the sponsor and any other adults living in the household or identified in a sponsor care plan, and, along with any adult living in his household, undergo a background check. UAC Policy Guide §§ 2.2.4, 2.5; Biswas Decl. ¶ 9. All potential sponsors must also submit proof of address, income, sponsor-child relationship, and criminal history documents (if applicable). UAC Policy Guide § 2.2.4; Biswas Decl. ¶ 11. Additionally, in certain circumstances a home study, which consists of interviews, a home visit, and a written report containing a case worker's findings, is performed. UAC Policy Guide § 2.4.2; Biswas Decl. ¶ 9.

Once the assessment of the potential sponsor is complete, the care provider makes a release recommendation to ORR. UAC Policy Guide § 2.7; Biswas Decl. ¶ 11. The recommendation must take into consideration all relevant information, including the report and recommendations from a home study, if conducted, laws governing the process, and other facts in the case. Biswas Decl. ¶ 11. ORR makes the final release decision. UAC Policy Guide § 2.7; Biswas Decl. ¶ 11. Release decisions include: (1) approve release to sponsor; (2) approve release with post-release services; (3) conduct a home study before a final release decision; (4) deny release; or (5) remand for further information. UAC Policy Guide § 2.7; Biswas Decl. ¶ 11. The Policy Guide describes various circumstances under which ORR will or may deny release. Generally, ORR denies release if: (1) the potential sponsor is not willing or able to provide for the child's physical or mental well-being; (2) the potential sponsor is not willing to complete the mandatory fingerprint check; (3) the physical environment of the home presents a risk to the child's safety or well-being; or (4) release of the UAC would present a risk to him or herself, the sponsor, household, or community. UAC Policy Guide § 2.7.4; Biswas Decl. ¶ 12.

II. Factual and Procedural History

As described in the petition, the petitioner is a Honduran national who first came to the

United States "[o]n or about October 15, 2022" and "was designated a[s a] . . . UAC . . . and placed in the custody of . . . ORR." Pet. ¶ 18. "On or about December 6, 2022 Petitioner was released from ORR custody to his cousin and" lived "in Illinois." *Id.* On November 7, 2025, however, the petitioner was arrested by immigration officials and initially detained by U.S. Immigration and Customs Enforcement ("ICE"), and at "about 7:00 p.m. ICE agents transported Petitioner to Heartland Int. Children's Residential Center, an ORR facility." *Id.* at ¶ 19. Thirteen days later, "the Cook County Circuit Court appointed N.C.S.E. as legal guardian of Petitioner *nunc pro tunc* to February 1, 2023." *Id.* at ¶ 21. The petition explains that this was done after A.N.P.S. had been detained for over a week in order to make "N.C.S.E. . . . the Court-appointed legal guardian of Petitioner" under "ORR Rule 2.2.1. Identification of Qualified Sponsors, B.Y.P.O. is a 'Category 1: Parent or legal guardian."[2] *Id.* at ¶ 11.

With an order from the Cook County Probate Court in hand, A.N.P.S. filed a habeas petition on December 5, 2025, alleging (1) that detaining him violates Due Process, *id.* at ¶¶ 25–29; (2) that his detention is arbitrary and capricious under the Administrative Procedure Act ("APA"), *id.* at ¶¶ 30–33; (3) that his detention is *ultra vires* under 6 U.S.C. § 279 because A.N.P.S. should no longer be considered to be a UAC, *id.* at ¶¶ 34–37; and (4) that the continued detention of A.N.P.S. violates the *Accardi* doctrine for "violat[ing] ORR's own rules,"[3] *id.* at ¶¶ 38–41. *See* Pet. at 17 (Prayer for Relief). This court ordered respondents to file their return by December 12, 2025. Dkt. 14.

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[2] It is unclear who "B.Y.P.O." is.

[3] *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954) (faulting the Attorney General for short-circuiting altogether legally prescribed adjudication procedures by "dictating" an immigration decision himself); *see also Vitarelli v. Seaton*, 359 U.S. 535, 547 (1959) (Frankfurter, J., concurring) (describing the *Accardi* doctrine as a "judicially evolved rule of administrative law").

Legal Standard

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

Argument

I. The Petitioner's APA and *Accardi* Claims Cannot Be Brought Where, As Here, Habeas is an Adequate Remedy.

As a threshold matter, A.N.P.S.'s APA and *Accardi* claims (Counts Two and Four in the petition) for ORR purportedly violating its own rules are not viable as a matter of law. This is because 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."[4] *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (per curiam); *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 petitioner can challenge his detention. And even if the petitioner's 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

[4] This memorandum uses the term "foreign national" as equivalent to the statutory term of "alien" within the Immigration and Nationality Act.

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). Petitioner's APA and *Accardi* claims should be treated the same here.

II. Administrative Exhaustion Is Appropriate Here.

Turning to another threshold point, A.N.P.S.'s petition is untimely where, as here, N.C.S.E. has not even submitted a sponsorship application with ORR. *See, e.g., Richmond v. Scibana,* 387 F.3d 602, 604 (7th Cir. 2004) (discussing the "common-law exhaustion rule [that] applies to § 2241 actions"); *Baker v. Warden*, No. 23 C 50028, 2025 WL 1398979, at *3 (N.D. Ill. May 14, 2025) (petitioners "must exhaust their federal administrative remedies before seeking habeas relief in court"). 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 N.C.S.E. "has refused to fill out the sponsor application or provide required supporting documents to ORR." Biswas Decl. ¶ 18.

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. And it appears from the petition that A.N.P.S. was previously released by ORR in 2023. Pet. ¶ 18. Further, there is no allegation whatsoever that ORR is preventing N.C.S.E. from filling out or sending in a sponsorship application. Consequently, the court should require exhaustion so that N.C.S.E. can at least submit a sponsorship application to ORR. *See Woodford v. Ngo*, 548 U.S. 81, 90–91 (2006) ("Proper exhaustion demands compliance with an agency's deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings.").

As alluded to above, the statutory and regulatory framework contemplate a robust administrative process to allow ORR to vet sponsorship applicants. *See supra* pp. 5–7. Bypassing that process entirely via habeas relief (or through an ex post guardianship order from a State court) 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). And regarding time, the sponsorship application process is supposed to be performed relatively expeditiously. *See* Biswas

Decl. ¶ 19 ("Pursuant to ORR's regulations, ORR adjudicates completed sponsorship applications of close relatives, such as Category 2B potential sponsors, within 14 days[.]" (citing 45 C.F.R. § 410.1205(b))). There is thus little reason why exhaustion should not be required here.

III. ORR's Custody of A.N.P.S. Is Required By Statute.

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

In this case, the contrast is even more stark, as A.N.P.S. was admittedly brought into ORR custody in early November 2025 *before* he had any parent or recognized legal guardian within the United States. *Compare* Pet. ¶ 10 ("ORR has detained Petitioner . . . since November 7, 2025"), *with id.* at ¶ 21 ("On November 20, 2025 the Cook County Circuit Court appointed N.C.S.E. as legal guardian of Petitioner"). This means that ORR took custody of A.N.P.S. when he was a UAC under the HSA. And in that circumstance, the TVPRA reinforces and expands upon the government's responsibility for the care of UACs. Unlike adults in the custody of other agencies, ORR cannot simply release children in its care on their own recognizance, or to just anyone who is willing to sponsor them. 6 U.S.C. § 279(b)(2)(B). Rather, the TVPRA requires that ORR make a considered decision about each child's placement based upon all the circumstances—which would include assessing sponsors who suddenly come forward as legal guardians weeks after the

child was placed into ORR custody. *See* Biswas Decl. ¶¶ 7–11.

As discussed above, the petition should fail because N.C.S.E. has *not even applied* to ORR to take custody of A.N.P.S. so that ORR can make a considered decision of any kind. *Id.* at ¶ 18. Instead of going the direct route contemplated under the statute and regulations, N.C.S.E. has attempted to short-circuit that process by going directly to the Cook County Probate Court, and from there to this court to superintend the UAC determination that was made thirteen days before the Cook County court's guardianship order. That argument must fail under principles of federal supremacy because it would nullify the TVPRA's explicit delegation of authority in § 1232(c)(3)(A)–(C) that *only* the HHS Secretary shall make such decisions regarding the placement of UACs. *Cf. Sperry v. State of Fla. ex rel. Fla. Bar*, 373 U.S. 379, 384 (1963) ("But 'the law of the State, though enacted in the exercise of powers not controverted, must yield' when incompatible with federal legislation." (quoting *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 211 (1824))).[5]

Considering N.C.S.E.'s refusal to even attempt the sponsor assessment process, ORR's actions in this matter strictly follow the TVPRA's requirements. As discussed above, ORR is *prohibited* from releasing A.N.P.S. to N.C.S.E.'s custody until it makes "a determination that the proposed custodian is capable of providing for the child's physical and mental well-being." 8 U.S.C. § 1232(c)(3)(A). N.C.S.E.'s failure to even provide a sponsor application prevents ORR

[5] It is also unclear whether the Cook County court's order is controlling as to ORR. From the record in this case, the child in this case entered ORR custody on November 7, 2025; petitioner requested the guardianship order on November 14, 2025, and it was granted on November 20, 2025. But under 8 U.S.C. § 1101(a)(27)(J)(I), "no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction." ORR's specific consent procedures are discussed in the Foundational Rule at 45 C.F.R. § 410.1209. ORR did not grant such specific consent here. *See* Biswas Decl. ¶ 17.

from making that determination. Accordingly, ORR is acting in accordance with the TVPRA's requirements, and A.N.P.S. should not be released.

IV. Nothing About ORR's Continued Care for A.N.P.S. Violates Due Process.

Petitioner also argues that ORR's custody of him constitutes a due process violation because he "and his legal guardian have a liberty interest under the Due Process Clause in remaining together," asserting that his detention as a UAC "violates substantive due process because it furthers no legitimate purpose" and "procedural due process because it was undertaken without any hearing." Pet. ¶¶ 27–29. These arguments, however, are contrary to well-established precedent and ignore the significantly diminished interest that N.C.S.E. had in not having custody over A.N.P.S. at the time he was placed into ORR's care on November 7, 2025.

Start with procedural due process. A procedural due process analysis typically considers the three factors articulated by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976). But under that analysis, the petitioner cannot demonstrate that the process that ORR provides to N.C.S.E. is lacking because no one has even tried to go through that process. Biswas Decl. ¶ 18. Next turn to the procedural due process analysis allegation that separation occurred here without a hearing. Pet. ¶ 29. In the only Supreme Court case dealing with UACs, the Court held that children such as A.N.P.S. (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. This is especially so when federal law

requires that a child be placed in ORR's custody and may not be released to anyone else's custody unless and until ORR determines it may do so safely. 8 U.S.C. § 1232(c)(3).

Finally, and to the extent petitioner presses an amorphous interest in family unity, 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, N.C.S.E.'s guardianship via county paperwork was only established after A.N.P.S. had been arrested. Their *ex-post* efforts to create "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).

Conclusion

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

Respectfully submitted,

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