UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

E.H.C.F., a Minor, by his next friend, MILEIDY YAMALY CONTRERAS FLORES, Petitioner	:	
v.	:	Case No.: 3:25-cv-2142 (OAW)
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL, Respondent	:	

RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

On December 22, 2025, Petitioner E.H.C.F. ("Petitioner"), by and through his next friend, Mileidy Yamaly Contreras Flores ("Sponsor" or "Flores"), filed a habeas petition claiming that the Department of Health and Human Services Office of Refugee Resettlement ("ORR") failed to timely adjudicate the sponsorship application of Ms. Flores. Petitioner claims that this delay is arbitrary and capricious and requests immediate release from the custody of ORR to the unapproved sponsor.[1] ECF No. 1. On December 23, 2025, Petitioner also filed an Emergency

[1] During a conference call with the Court on December 30, 2025, Petitioner's counsel conceded that if Petitioner is released to the Sponsor, this case can be dismissed. If a determination is made that the Petitioner cannot be released to the sponsor, the case is still moot because Petitioner and/or his sponsor will be entitled to due process, as outlined below, concerning ORR's decision.

If the potential sponsorship to a parent or legal guardian or close relative is denied, the ORR Director or their designee shall promptly notify the potential sponsor of the denial in writing via a Notification of Denial letter. *See* 45 CFR § 410.1205(c). While not pertinent to this application, this right to a written denial does not extend to Category 3 sponsors, who may include either distant relatives or unrelated adult individuals. Included in the Notification of Denial is notice that the proposed sponsor may request an appeal of denial. *Id.* If the sole reason for the denial of release is a concern that the UAC is a danger to self or others, ORR shall send the UAC and their counsel (if represented by counsel) a copy of the Notification of Denial and the child may also seek an appeal of the denial. *See* 45 CFR § 410.1205(f). Separately, the UAC, or their parent, or legal guardian, can request a risk determination hearing before an independent HHS hearing

Motion for a Temporary Restraining Order and Preliminary Injunction. ECF No. 5. The Government respectfully submits this memorandum of law in opposition to the Emergency Motion for a Temporary Restraining Order and Preliminary Injunction, ECF No. 5.

I. PRELIMINARY STATEMENT

The goal of the Department of Health and Human Services Office of Refugee Resettlement is to release unaccompanied minor alien children ("UAC") to suitable sponsors consistent with its statutory mandate to ensure that placement does not result in: danger to the UAC, danger to the community, or a risk of flight by any UAC. *See, e.g.*, 6 U.S.C. § 279(b)(1), (b)(2)(A)(ii); 8 U.S.C. § 1232(c)(1),(c)(3)(A). In accomplishing this goal, ORR must balance its responsibility to make and record prompt and continuous efforts towards release of UAC, *see* 45 C.F.R. § 410.1203(a), with concurrent duties to ensure the safety of releases. That is exactly what ORR is doing with respect to the sponsorship application at issue in this case.

Petitioner is a native and citizen of Honduras who was most recently detained by the Department of Homeland Security ("DHS") on May 8, 2025. *See* Complaint for Injunctive and Declaratory Relief, ECF No. 1 at ¶ 1. Petitioner was detained after being arrested on May 8, 2025, by the Chelsea, Massachusetts Police Department on charges of assault. *See* ECF No. 1 at ¶ 3 and Declaration of Toby Biswas, Deputy Director for Policy for the Unaccompanied Alien Children Bureau, attached hereto as Exhibit A at ¶ 17. Since Petitioner was deemed to be an unaccompanied minor, he was transferred to the custody of ORR on May 11, 2025. *Id.*

officer. *See* 45 CFR § 410.1903. All UAC in restrictive placements based on a finding of dangerousness shall be afforded a hearing before an independent HHS hearing officer, to determine, through a written decision, whether the UAC would present a risk of danger to self or to the community if released, unless the UAC indicates in writing that they refuse such hearing. *See* 45 CFR § 410.1903(a). UAC placed in restrictive settings shall receive a written notice of the procedures. *Id.* Additionally, all other UAC in ORR custody may request a hearing to determine, through written decision, whether the UAC would present a risk of danger to self or to the community if released. *See* 45 CFR § 410.1903(b).

Petitioner's challenges are without merit and have no likelihood of success on the merits. The Respondents have actively been adjudicating the sponsorship application filed on May 26, 2025, and there has not been any unreasonable delay. Furthermore, ORR is processing the sponsorship application in accordance with applicable laws and regulations. For these reasons, as detailed further below, this Court should deny the motion for a temporary restraining order and preliminary injunction.

II. TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION STANDARD OF REVIEW

A motion for a temporary restraining order is "an extraordinary and drastic remedy." *Students for Fair Admissions v. U.S. Mil. Acad. at West Point*, 709 F. Supp. 3d 118, 129 (S.D.N.Y. 2024) (quoting *Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007)); *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam). It is "never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008); *see also id.* at 22 ("Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the Plaintiff is entitled to such relief.").

In the Second Circuit, the standard for issuing a TRO is the same as the standard for the issuance of a preliminary injunction. *See Fairfield Cty. Med. Ass'n v. United Healthcare of New England*, 985 F. Supp. 2d 262, 270 (D. Conn. 2013), *aff'd as modified sub nom. Fairfield Cty. Med. Ass'n v. United Healthcare of New England, Inc.*, 557 F. App'x 53 (2d Cir. 2014). A party seeking a TRO or preliminary injunction that "will affect government action taken in the public interest pursuant to statute or a regulatory scheme" must demonstrate: (1) irreparable harm absent injunctive relief, (2) a likelihood of success on the merits, (3) public interest weighing in favor of granting the injunction, and (4) that the balance of equities tips in its favor. *We The Patriots USA,* *Inc. v. Hochul*, 17 F.4th 266, 279–80 (2d Cir. 2021), *opinion clarified* 17 F.4th 266, 268 (2d Cir. 2021); *Yang v. Kosinski*, 960 F.3d 118, 127 (2d Cir. 2020).

"The injunction will only be granted if both irreparable harm and a likelihood of success on the merits are shown." *Nat'l Ass'n for Gun Rights v. Lamont*, 685 F. Supp. 3d 63, 75 (D. Conn. 2023) (citing *Plaza Health Lab., Inc. v. Perales*, 878 F.2d 577, 580) (2d Cir. 1989); *see also Citibank, N.A. v. Citytrust*, 756 F.2d 273, 275 (2d Cir. 1985) ("Even if we were to agree that plaintiffs' likelihood of success is as clear as the district court concluded, on this record plaintiffs still failed to establish the irreparable harm essential to entitle them to the extraordinary relief of a preliminary injunction.").

III. STATUTORY AND REGULATORY BACKGROUND REGARDING ORR CUSTODY

The statutory and regulatory framework governing the federal care and custody of Unaccompanied Alien Children ("UAC"), as well as their release and sponsorship, reflects congressional intent for ORR to "mak[e] placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status" that ensure UAC "are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity." 6 U.S.C. § 279(b)(1)(C), (b)(2)(A)(ii). That framework balances the mandate that ORR protect UAC from harm with the requirement that ORR "promptly" place UAC "in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A).

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), abolishing the Immigration and Naturalization Service ("INS") and transferring the responsibility for the care and placement of UAC 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."[2] 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). These responsibilities are carried out through cooperative agreements and contracts with care providers under ORR policies and oversight. *See* 6 U.S.C. § 279(b)(1); 31 U.S.C. § 6305.

B. <u>The Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA")</u>

Congress enacted the TVPRA in 2008 to strengthen protections for UAC and support their safe repatriation or appropriate placement. The statute, consistent with the HSA, makes the Secretary of HHS responsible for the care and custody of UAC. 8 U.S.C. § 1232(b)(1). The TVPRA prohibits HHS from releasing a child to a proposed custodian unless HHS first "makes a determination that the proposed custodian is capable of providing for the child's physical and mental well-being," which "shall, at a minimum, include verification of the custodian's identity

[2] This determination is made at the time of border apprehension and does not change if a sponsor is later identified. *See generally* 8 U.S.C. § 1232(b)(3); UAC Policy Guide § 1.1. In this case, ORR accepted this referral after the child's father was detained by DHS and the mother failed to report to ERO at the requested time on May 9, 2025. Per the referral notes, the Mother could not be located or contacted at that time and therefore it was determined that "no parent or legal guardian in the United States [was] available to provide care and physical custody."

and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child." 8 U.S.C. § 1232(c)(3)(A). It also requires the HHS Secretary 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). The TVPRA requires ORR to prioritize the safety and well-being of UAC while in its care and upon release. Under its regulations, ORR assesses all potential sponsors (even when the potential sponsor is a child's parent or legal guardian) before making any release determination, including a review of the potential sponsor's strengths, resources, risk factors, and relationship to the UAC. *See, e.g.*, 45 C.F.R. §§ 410.1201(a); 1202(b) and (c).

C. <u>The Foundational Rule (2024)</u>

In April 2024, ORR promulgated the Unaccompanied Children Program 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*[3]

[3] *See Reno v. Flores*, 507 U.S. 292, 294-95 (1993). The original complaint in the *Flores* litigation was filed on July 11, 1985. The issue at the heart of the *Flores* litigation was the practices of the legacy Immigration and Naturalization Service ("INS") regarding unaccompanied minors in the INS's Western Region who were subject to removal and who were eligible for discretionary release from detention, but who could not be released because there was no immediately available custodian to whom the INS could release them. *See Reno v. Flores*, 507 U.S. 292, 294-95 (1993). The Government could not "simply send them off into the night on bond or recognizance" but instead needed to "assure itself that someone will care for those minors pending resolution of their deportation proceedings." *Id.* at 295. To address this problem, the INS's Western Regional Office "adopted a policy of limiting the release of detained minors to a parent or lawful guardian, except in unusual and extraordinary cases, when the juvenile could be released to a responsible individual who agree[d] to provide care and be responsible for the welfare and well-being of the child." *Id.* at 295-96 (quoting *Flores v. Meese*, 934 F.2d 991, 994 (9th Cir. 1990), *vacated*, 942 F.2d 1352 (9th Cir. 1991) (en banc)) (internal quotations omitted). Plaintiffs' lawsuit challenged this policy and sought to compel the release of unaccompanied minors to non-parental guardians or private custodians. *Id.* at 302. Their lawsuit was brought on behalf of a certified class of minors "who [had] been, are, [were] denied release from INS custody because a parent or legal guardian failed to personally appear to take custody of them." Order Re Class Certification, Aug. 12, 1986; *see also Reno*, 507 U.S. at 296. In 1996, the parties entered into the *Flores* Settlement Agreement to resolve the case, and it was approved by the court in 1997. However, the FSA has been mostly terminated as to HHS. *See Flores v. Garland*, No. CV 85-4544-DMG (AGRX), 2024 WL 3467715, at *9 (C.D. Cal. June 28, 2024) (conditionally and partially terminating the FSA as to the U.S. Department of Health and Human Services, on the basis of ORR's publication of

("FSA") relevant to ORR's care and custody of UAC and conditionally and partially terminated the FSA as to ORR in June 2024. Effective July 1, 2024, the Foundational Rule formalized previously informal procedures, including those related to ORR's release policies and practices.

The Foundational Rule provides that ORR identifies a standard program placement, unless one of the exceptions in 45 C.F.R. § 410.1104 applies, for the UAC upon notification from any federal department or agency that a child in its custody is an UAC and therefore must be transferred to ORR custody. 45 C.F.R. § 410.1101(b). ORR 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; UACB Policy Guide § 1.2. ORR also considers several factors that are 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).

While the UAC remains in ORR custody, ORR seeks to release the 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), "verification of the

regulations implementing the Agreement). The few remaining paragraphs of the Flores Settlement Agreement that still apply to HHS do not pertain to ORR release processes (e.g., sponsor vetting processes). *See Flores*, 2024 WL 3467715, at * 9.

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 reinforces congressional intent articulated in the HSA and TVPRA that HHS ensure UAC protection from human traffickers and release UAC only to those sponsors capable of protecting their well-being. 45 C.F.R. § 410.1003.

D. <u>ORR Release Policies and Practices</u>

To carry out its statutory mandate under the HSA and TVPRA, ORR has developed policies and procedures for identifying, and conducting suitability assessments of, potential sponsors. These procedures are generally set out in the ORR's publicly available UAC Bureau Policy Guide (UACB Policy Guide). *See* ORR Unaccompanied Alien Children Bureau Policy Guide, *available at* https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide. 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. Exhibit A at ¶ 9. Rather, ORR only takes children into its custody upon referral by another federal agency, as described in statute. *Id.* In this regard, ORR is also very different from state child welfare agencies, which typically retain such authority post-placement. *Id.* 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 UAC 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." UACB Policy Guide § 2.1; Exhibit A at ¶ 10. 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. UACB Policy Guide § 2.2.1; Exhibit A at ¶ 10. 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. *Id.* §§ 2.2.2, 2.4; Exhibit A at ¶¶ 10, 12.

A potential sponsor must complete a Family Reunification Application ("FRA"), 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. UACB Policy Guide §§ 2.2.4, 2.5; Exhibit A at ¶ 11. All potential sponsors must also submit proof of address, income, sponsor-child relationship, and criminal history documents (if applicable). *Id.* § 2.2.4; Exhibit A at ¶ 11. Additionally, in certain circumstances a home study, which consists of interviews, a home visit, and a written report containing the home-study case worker's findings, is performed. *Id.* § 2.4.2; Exhibit A at ¶ 12.

Once the assessment of the potential sponsor is complete, the care provider makes a release recommendation. UACB Policy Guide § 2.7; Exhibit A at ¶ 13. The recommendation must take into consideration all relevant information, including the report and recommendations from a home study, if conducted, laws governing the process, and other facts in the case. *Id.* ORR makes the final release decision. UACB Policy Guide § 2.7; Exhibit A at ¶ 13. 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; Exhibit A at ¶ 13. ORR denies release if: (1) the potential sponsor is not willing or able to provide for the child's physical or mental well-being; (2) the potential sponsor is not willing to complete the mandatory fingerprint check; (3) the physical environment of the home presents a risk to the child's safety or well-being; or (4) release of the UAC would present a risk to him or herself, the sponsor, household, or community. *Id.* § 2.7.4; Exhibit A at ¶ 14. Further, in making such placements, HHS "may consider danger to self, danger to the community, and risk of flight." 8 U.S.C. § 1232(c)(2)(A); Exhibit A at ¶ 15. If the sole reason for the denial of release is a concern that the UACB is a danger to self or others, ORR shall send the UAC and their counsel (if represented by counsel) a copy of the Notification of Denial and the child may seek an appeal of the denial. 45 C.F.R § 410.1205(f); Exhibit A at ¶ 15.

For good reason, the statutes do not require ORR to complete its processing of sponsorship applications within a certain time frame. HHS regulations do require that review of sponsorship applications of parents, and other close relatives, be adjudicated within 10 calendar days of the completed sponsorship application. *See* 45 C.FR. § 410.1205(b). However, this to 10-day deadline does not apply to cases, like the one presented here, that have "unexpected delays (such as a case that requires completion of a home study)." *Id.* Other unexpected delays could include an admission by the UAC regarding [redacted] activity, the UAC expressing fear of returning to the sponsors' home, and concern for the community upon release of the UAC.

IV. BACKGROUND

Petitioner was admitted to ORR care on May 11, 2025. Exhibit A at ¶ 17. Petitioner came to ORR care as the result of a criminal arrest for assault. *Id.* Petitioner was initially placed at Compass Connections San Antonio Heightened Supervision Facility, but was discharged and transferred to the Noank-Mystic Shelter ("Noank") in Mystic, Connecticut on August 7, 2025.[4] *Id.* At the time of Petitioner's initial placement, ORR began its normal sponsorship verification procedures to process him for release to a viable sponsor. *Id.* As of May 13, 2025, ORR identified a potential sponsor for the Petitioner in the form of a Category 1 sponsor (mother), Ms. Flores, and has been continually working on the process required for release of a child to a sponsor as described in the UAC Program Foundational Rule at 45 C.F.R. § 410 Subpart C – Releasing an Unaccompanied Child from ORR Custody. Exhibit A at ¶ 18.

Ms. Flores initially expressed interest in sponsoring her child but indicated that she needed some time to consider her options and would follow up once she decided. *Id.* at ¶ 19. On May 18, 2025, Ms. Flores indicated she was not able to sponsor her child but would look for someone else

[4] Noank has provided services to ORR since 2014 and is experienced in all the protocols, policies and procedures of ORR. *See* Declaration of Regina Moller, M.D., LADC, Executive Director of the Noank Community Support Services, attached hereto as Exhibit B. Noank is licensed through the Connecticut Department of Children and Family ("DCF") to provide housing to children (male and female) ages 0 through 17, including pregnant and parenting and tender ages. *Id.* at ¶ 3. Noank is 12-bed program in a regular house in a neighborhood community. *Id.* at ¶ 6. Noank consists of two floors, an attic, and a basement. *Id.* at ¶ 7. Noank has two floors designated for sleeping. *Id.* On the first floor, there are 3 bedrooms for children, three bathrooms, a medical closet office, a staff office, management office, living room area, one large multipurpose room (dining, class, and activity room), a kitchen, and laundry room. *Id.* The second floor has 3 bedrooms, two bathrooms, a living room, and a clinical office. *Id.* The attic is locked and off limits to youth and utilized as storage. *Id.* The basement does not have an entrance through the main building and is entered through the exterior that is always locked and contains the boiler room. *Id.* There is one designated area within the outside perimeter of Noank designated for outdoor recreation and physical education. *Id.* The facility has a barn that is utilized for games, exercise, equipment use, and storage. *Id.* Noank welcomes children from diverse backgrounds, providing everything they need to flourish. *Id.* at ¶ 8. The cultural and linguistic diversity of staff continues to be one of the program's greatest assets. *Id.* In addition to providing residential care, the program provides or arranges for medical care, therapy, case management, educational services on site. *Id.* at ¶ 9. All services are trauma-informed and strengths-based to provide quality and effective services to foreign-born populations in the United States. *Id.* Noank has one teacher, one assistant teacher, a recreation coordinator, and two staff to assist during school hours. *Id.* at ¶ 10. Individual education plans are developed for each child. *Id.* There are outside field trips as subject appropriate, such as the Mystic Aquarium for science and other museums. *Id.*

who can assist. *Id.* at ¶ 20. Ms. Flores was provided with the Sponsorship Application and the Authorization for Release of Information ("ARI") on May 20, 2025. *Id.* at ¶ 21. Ms. Flores submitted the Sponsor Application and ARI on May 22, 2025, however there was missing information and incorrect information on the application. *Id.* When the case manager contacted Ms. Flores to clarify the errors, she indicated she was at work and could not complete it that day. *Id.* However, those errors were corrected on May 26, 2025. *Id.*

Ms. Flores completed her fingerprint appointment on May 27, 2025. Exhibit A at ¶ 22. Due to a positive result, Ms. Flores' fingerprints were flagged for "Review/Referred to FFS" meaning they were elevated to the Federal Field Specialist ("FFS") to determine whether the results "include criminal history record information that may present a safety risk or concern for the child and requires additional review in the context [of] all other available sponsor data." *See* Field Guidance 26 – Fingerprint Background Checks and Acceptable Supporting Documentation for a Family Reunification Application at ¶ 6, available at https://acf.gov/orr/policy-guidance/uc-program-field-guidance; *see also* UACB Policy Guide § 2.7.4. Disqualifying factors were not identified by the FFS, so Ms. Flores was cleared to continue the reunification process. The alternative caregiver/household member's,[5] Keren Lizeth Flores Romero ("Keren"), fingerprint appointment was scheduled for May 29, 2025. *Id.*

ORR was also required to complete a home study with respect to this application pursuant to UACB Policy Guide § 2.4.2 as the sponsor, Ms. Flores, had previously sponsored two or more children and was seeking to sponsor an additional child. Exhibit A at ¶ 23. Ms. Flores' and Keren's child abuse and neglect checks ("CAN") were initiated on June 10, 2025. *Id.* at ¶ 24. That

[5] The alternate caregiver is the individual who would assume sponsorship if the sponsor is unable to provide for the child's care after the release.

same day, Ms. Flores provided paycheck stubs as her proof of income, as required by UACB Policy Guide § 2.2.4. *Id.*

On June 15, 2025, the home study referral was closed, and a positive recommendation was made. *Id.* at ¶ 25. On June 17, 2025, ORR sent Ms. Flores' and Keren's foreign passports and birth certificates to the Honduran consulate for verification. *Id.* at ¶ 26; *see* 45 C.F.R. § 410.1202(b) ("ORR may consult with the issuing agency"). DNA testing of Petitioner and Ms. Flores occurred on June 20, 2025, and their biological relationship was confirmed on June 29, 2025. *Id.* at ¶ 27.

On July 1, 2025, ORR received confirmation from the consulate of the authenticity of Keren's passport and birth certificate, as well as Ms. Romero's birth certificate. *Id.* at ¶ 28. At this point in the process, all potential sponsors must submit original, unexpired versions or legible full color photocopies, digital scans, or high-resolution digital photos of government-issued identification documents from the list of acceptable documents. Exhibit A at ¶ 30. For category 1 sponsors who are unable to provide one of those acceptable documents, a waiver may be requested and is considered by ORR leadership. *See* UACB Policy Guide 2.2.4; Exhibit A at ¶ 30. On July 31, 2025, Ms. Flores informed ORR that Keren, who did not have acceptable government-issued identification, would attempt to obtain an enhanced library card and, if unable to get that identification, could provide an identification through the university she was enrolled in and would start attending soon. *Id.* at ¶ 29. Because Keren could not provide one of those documents from the list of acceptable documents, ORR initiated a waiver request on Keren's behalf on August 14, 2025. Exhibit A at ¶ 30. A clinician followed up with the child in an individual session to better assess these concerns and help the child process these concerns. *Id.* at ¶ 31.

On September 12, 2025, Petitioner was interviewed by the home study investigator, detailed [redacted] involvement, and expressed concerns about safety, including the potential for retaliation from [redacted] upon reunification with his mother. Exhibit A at ¶¶ 31, 37.

On September 15, 2025, a new household member, Cesar Heriberto Contreras Romero ("Romero"), was identified during a family session conducted to address the concerns for safety vocalized by the Petitioner. *Id.* at ¶ 32. Mr. Romero, who is Petitioner's father, was not listed as a household member on the original sponsorship application. *Id.* It was disclosed during the family session that Mr. Romero had been living in the home since August 13, 2025.[6] *Id.* Despite being told that she had a duty to supplement information if it changed and to identify all household members, including those who joined the household after the Sponsorship Application was submitted, Ms. Flores reported she did not notify ORR of this information, as required, because she feared Petitioner's case would be compromised, and she was unsure if Mr. Romero's release was temporary or permanent. *Id.*

The FFS spoke with Ms. Flores on October 9, 2025, and explained that ORR would have to conduct additional vetting due to the fact that a new household member had been identified. *Id.* at ¶ 33. The FFS asked Ms. Flores to submit additional missing documents and started a background check on Mr. Romero, the alternative caregiver/household member. *Id.* The FFS also notified Ms. Flores that an addendum to the home study would also be required. *Id.*

Mr. Romero completed his Authorization for Release of Information on October 24, 2025. *Id.* at ¶ 34. Mr. Romero completed his fingerprint appointment on October 31, 2025. *Id.* at ¶ 35.

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[6] Ms. Flores' Declaration submitted in support of the Motion for Preliminary Injunction states that her husband returned to her home on June 13, 2025, two months prior to the date stated to ORR case workers. *See* ECF No. 21, Declaration of Mileidy Yamaly Contreras Flores, at ¶ 23. Ms. Flores also states in her declaration the ORR staff should have known Mr. Romero was back in the home because he had been released from custody. *Id.* ORR is not the Department of Homeland Security and does not review detainee release records, especially for individuals who have no applications submitted to the HHS.

The child abuse and neglect check forms were received from Mr. Romero on November 7, 2025, and the child abuse and neglect vetting was initiated on November 17, 2025. *Id.* at ¶ 35. The child abuse and neglect results were received on December 10, 2025. *Id.* The home study addendum was approved on November 21, 2025. *Id.* at ¶ 36.

On December 15, 2025, a clinician met with Petitioner to discuss the statement he made during the home study interview about his [redacted] and safety concerns. *Id.* at ¶ 37. ORR continues to assess Petitioner's risk of danger to self or to the community if released. *Id.* Additional sponsor vetting is also occurring at this time. *Id.* at ¶ 38.

Once the additional sponsor vetting is concluded and a determination is made that the sponsor is capable of providing for the physical and mental well-being of Petitioner and whether release would result in a danger to the child or the community if released, ORR will move forward with a decision on the viability of the sponsorship. *Id.* at ¶ 39.

V. **<u>ARGUMENT</u>**

Despite all the varied claims that Petitioner presents in his habeas and motion for preliminary injunction, at bottom, the instant civil action seeks Article III judicial review over the alleged delay, a claim which Defendants deny, in issuing a final decision on an application for sponsorship of a UAC. Regardless of the specific arguments advanced in support of a request for judicial review – including constitutional or statutory infirmities – the APA serves as the general basis for an "aggrieved" individual to seek such judicial review of a final agency decision or to compel agency action. *See* 5 U.S.C. § 706(2). Indeed, courts have repeatedly rejected litigants' attempts to circumvent the APA by presenting independent, standalone causes of action to the effect that a particular agency action (or inaction) violated a particular federal statute or constitutional provision. *See, e.g.*, *Chiayu Chang v. U.S.C.I.S.*, 254 F. Supp. 3d 160, 162 (D.D.C. 2017) (disallowing discovery beyond the administrative record); *Lucas R. v. Azar*, No. CV 18-

5741-DMG (PLAX), 2018 WL 7200716, at *7 n.12 (C.D. Cal. Dec. 27, 2018) (holding that the TVPRA does not create an independent cause of action against the federal government separate from the APA).[7]

ORR has lawful custody of the Petitioner under its authorities. ORR is working with the Ms. Flores to ensure that Petitioner, if released, will be in a safe environment. ORR is also obliged to ensure the safety of the community where the Petitioner is to be released and to ensure that Petitioner would not present a risk to himself if he were to be released into the community. ORR has not delayed in adjudicating Ms. Flores' sponsorship application. The Court should deny the habeas petition and the motion for preliminary injunction to avoid frustrating the regulatory process, which is intended to ensure the safety of UAC, like Petitioner, as well as the safety of the community at large.

A. <u>**ORR's Custody of Petitioner is Required by Statute and is Lawful**</u>

At the outset, 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

[7] The TVPRA does not provide a standalone cause of action because it does not contain an express waiver of the government's sovereign immunity, and the government has not otherwise consented to suit under that statute. *See* 8 U.S.C. § 1232; *Lane v. Pena*, 518 U.S. 187, 192 (1996) ("A waiver of the Federal Government's sovereign immunity must be unequivocally expressed in statutory text"). *See also Stein v. United States Dep't of Educ.*, 450 F. Supp. 3d 273, 275–76 (E.D.N.Y. 2020) ("It is axiomatic 'that federal courts are courts of limited jurisdiction and lack the power to disregard such limits as have been imposed by the Constitution or Congress.'") (citing *Durant, Nichols Houston, Hodgson & Cortese-Costa P.C. v. Dupont*, 565 F.3d 56, 62 (2d Cir. 2009) (quotation marks and citation omitted). One such limit is that "[t]he United States, as sovereign, is immune from suit unless it waives immunity and consents to be sued." *Cooke v. United States*, 918 F.3d 77, 81 (2d Cir. 2019). "Therefore, federal courts lack subject matter jurisdiction over suits brought against the United States unless there exists a specific, express waiver of the government's sovereign immunity." *Stein*, 450 F. Supp. 3d at 275–76.

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 countervailing 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").

The TVPRA reinforces and expands upon the Government's responsibility for the care of unaccompanied alien children. Unlike adults in the custody of other agencies, ORR cannot simply release children in its care on their own recognizance. 6 U.S.C. § 279(b)(2)(B). Instead, the TVPRA requires that ORR make a considered decision about each child's placement based upon all of the circumstances. In this case, ORR is doing just that. The fact that the circumstances surrounding this sponsorship application, including the failure of Ms. Flores to identify new household members, has required additional vetting to ensure the safety of the Petitioner and the community does not alter the fact that ORR has proper, statutorily-mandated, custody of UAC, and it does not warrant frustrating the established process.

B. Given Petitioner's Lawful Detention, ORR is Following Applicable Statutes, Regulations, and Policies Before Releasing Petitioner to a Potential Sponsor

ORR has a dual mandate under the HSA and TVPRA. On the one hand, ORR must "mak[e] placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status"; on the other hand, ORR must ensure that UAC "are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity." 6 U.S.C. § 279(b)(1)(C) & (b)(2)(A)(ii). ORR must prioritize the health, safety, and wellbeing of UAC in its care while balancing the requirement to "promptly" place UAC "in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). Consistent with these statutory mandates, ORR has instituted policies and procedures and promulgated the Foundational Rule regarding key aspects of the placement, care, services, and release of UACs to sponsors.

After initially indicating that she did not want to sponsor Petitioner, Ms. Flores submitted an incomplete sponsorship application on May 22, 2205. Exhibit A at ¶ 21. ORR immediately advised Ms. Flores that the application was incomplete and that errors in the application needed to be corrected. *Id.* Since May 26, 2025, the date Ms. Flores corrected her application, ORR has diligently worked to process the application. There have not been any unreasonable delays by ORR in adjudicating the sponsor's application in this case. The length of time it has taken to complete the process is the result of several factors including the inability of the alternative caregiver to provide valid identification, the failure of Ms. Flores to identify new household members, and the concerns for Petitioner's safety, and the community, voiced by the Petitioner himself.

As detailed in the factual timeline outlined above in Section IV above, from the time the Sponsorship Application was complete on May 26, 2025, ORR worked on Ms. Flores' application. By the end of May 2025, fingerprint appointments were completed for both Ms. Flores and Keren, the alternative caregiver. Exhibit A at ¶ 22. In June 2025, child abuse and neglect checks were initiated; proof of income was submitted; the home study was completed, with a positive recommendation; passports and birth certificates were sent to the Honduran consulate for authentication; and DNA testing of Petitioner, and Ms. Flores was completed. Exhibit A at ¶¶ 24-27. By July 1, 2025, ORR had received confirmation of the authenticity of the birth certificates and passport. Exhibit A at ¶ 28.

From July 1, 2025, through August of 2025, ORR was awaiting for receipt of a valid government-issued identification document from Ms. Flores for the alternative caregiver, Keren.

Id. at ¶ 29-30. Ms. Flores had indicated that Keren would attempt to obtain an enhanced library card, and if she was unable to get that identification, she could provide identification through the university she was enrolled in. *Id.* However, Ms. Flores never submitted these documents. By August 14, 2025, ORR, *on its own initiative*, submitted a waiver request on behalf of Keren. *Id.* at ¶ 31.

On September 12, 2025, ORR conducted an interview with Petitioner. *Id.* During this interview, Petitioner discussed his [redacted] and expressed concerns of potential retaliation from [redacted] upon reunification with Ms. Flores. *Id.* at ¶¶ 31, 37. These concerns required a follow-up assessment with a clinician. *Id.* at ¶ 31. Additionally, as a result of these admissions, another family session was conducted three days later, on September 15, 2025. *Id.* at 32. It was during this second family session that ORR learned, for the first time, that Mr. Romero was living in the home. *Id.* While not living in the home when the Sponsorship Application was submitted in May of 2025, Mr. Romero had returned to the home on August 13, 2025 or earlier. *Id.* Despite having an obligation to update and supplement all information submitted to ORR, Ms. Flores did not advise ORR that Mr. Romero was living in the home because she feared that Petitioner's case would be comprised, and she was unsure whether Mr. Romero's release from custody was temporary or permanent. *Id.*

Upon discovering there was a new household member, Ms. Flores was advised, on October 9, 2025, that Mr. Romero would have to submit documents as an alternative caregiver/household member, background checks would have to be completed on Mr. Romero, and a new home study would be required. *Id.* at ¶ 33. Mr. Romero submitted his Authorization for Release of Information on October 24, 2025. *Id.* at ¶ 34. Mr. Romero completed his fingerprint appointment on October 31, 2025. *Id.* at ¶ 35. The child abuse and neglect forms were received on November 7, 2025, were submitted to the State on November 17, 2025, and the results were received on December 10, 2025. *Id.* The home study addendum was completed November 21, 2025. *Id.* at 36.

In light of this lengthy history, contrary to Petitioner's argument, ORR's actions in adjudicating this sponsorship application are not arbitrary or capricious. ORR must strictly follow the TVPRA's requirements and is prohibited from releasing Petitioner to the sponsor's care 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). As ORR has explained, Petitioner's admission to [redacted], his statements regarding his concern for his safety if returned to his sponsor's house, and the concern for the safety of the community, justifies the time it has taken to adjudicate this sponsorship application. Additionally, as stated to the Court on December 29, 2025, absent any additional unexpected delays, ORR expects to have obtained the additional sponsorship vetting application information within 15-20 business days from December 29, 2025.

Accordingly, because ORR has consistently acted in accordance with the TVPRA's requirements in this matter, Petitioner has failed to show likelihood of success that the Defendants arbitrarily and capriciously delayed the sponsorship application at issue in this case.

C. Nothing About ORR's Continued Care for Petitioner Runs Afoul of the Constitution

Petitioner argues that ORR's custody of her constitutes a procedural due process violation because by not issuing a final decision on the sponsorship application, ORR has deprived Petitioner of his liberty interests, and deprived him of his "right to family unification," without sufficient procedures. ECF No. 6 at pp. 14-18. These arguments, however, are contrary to well-established precedent.

A procedural due process analysis typically considers the three factors articulated by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under that analysis, Petitioner cannot demonstrate that the process that ORR provided here, to a family member seeking sponsorship of an unaccompanied alien child—including the extensive vetting that ORR has completed to ensure the safety of the Petitioner and the community before final adjudication of the sponsorship application—fails this necessary analysis.

The first *Mathews* factor addresses "the private interest that will be affected by the official action." *Id.* at 334. Petitioner identifies two interests: that of Petitioner being free from custody and that of a "family unity" between Petitioner and the sponsor. Neither outweighs the necessity to ensure the safety of the Petitioner and the community. Additionally, neither outweighs the remaining *Mathews* factors under the circumstances of this case, to the extent a *Mathews* analysis is appropriate at all.

First, the Supreme Court long has held that children, "unlike adults, are always in some form of custody." *Reno*, 507 U.S. at 302; *Schall*, 467 U.S. at 265. Every child's interest in freedom from constraint is conditional, whether that child is in ORR custody by statutory mandate or in the custody of a private guardian. "Institutional custody (despite the availability of responsible private custodians) is not unconstitutional in itself." *Reno*, 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 ORR determines it may do so safely. 8 U.S.C. § 1232(c)(3).

Second, even a parent's right to raise his child is "neither absolute nor unqualified." *Martin v. St. Mary's Dep't of Soc. Servs.*, 346 F.3d 502, 506 (4th Cir. 2003); *see also Friedman v. New York City Admin. for Children's Servs.*, No. 04-CV-3077(ERK), 2005 WL 2436219, at *5 (E.D.N.Y. Sept. 30, 2005) ("[w]hile the Supreme Court has recognized an abstract fundamental liberty interest in 'family integrity,' the Court has never found that interest to be absolute or unqualified … This is true, in part, because the right to family integrity is counter-balanced by the compelling governmental interest in the protection of minor children, particularly in circumstances where their protection is considered necessary as against the parents themselves.") That interest necessarily yields to a state's interest in investigating situations that may give rise to neglect and abuse, as the law requires ORR to do. 8 U.S.C. § 1232(c)(3)(A).

In addition, Petitioner incorrectly suggests that this deprivation occurs by virtue of the length of time he has been in custody. The amount of time a child spends in ORR custody alone does not amount to deprivation by ORR. The sponsorship process is not a one-way street. The process necessarily relies also on the availability and responsiveness of the sponsor herself, among myriad other factors. Here, ORR worked diligently to adjudicate the sponsorship application in this case. ORR encountered several delays in this application process including the inability of the alternative caregiver, Keren, to submit an acceptable government-issued identification, and the failure of Ms. Flores to disclose that Mr. Romero returned to the home in August of 2025 or earlier. Additionally, the Petitioner disclosed information which raised serious concerns for his safety, as well as the safety of the community. Safety concerns, such as these, cannot be ignored.

Finally, *Mathews* instructs that one must consider the "Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 334. The government's interest is substantial here. ORR stands in the shoes of the child as *parents patriae* to protect the child's interests in health and safety. *See D.B. v. Cardall*, 826 F.3d 721, 740-41 (4th Cir. 2016). Congress decided to codify ORR's interest in this regard by prohibiting ORR from releasing any child to any sponsor without first determining that it can do so safely. 8 U.S.C. § 1232(c)(3)(A). As the record here demonstrates, the concern here relates to Petitioner's own admissions about [redacted]

[redacted], his concern for his safety returning home, and the concern for the safety of the community. Exhibit A at ¶¶ 31, 37.

Based on the facts surrounding this sponsorship application and because ORR has consistently acted in accordance with the TVPRA's requirements in this matter, the Defendants respectfully submit that there has been no unreasonable delay in the adjudication of the sponsorship application in this case, whether under the APA or the constitution.

Lastly, if the Court thinks ORR failed to consider some important aspect of its statutory mandate or failed to timely adjudicate the sponsorship application under the arbitrary and capricious analysis, then the appropriate remedy would be a remand to the agency for the issuance of a final agency decision. The proper remedy would not be release in that case, especially where the agency is tasked by statutory mandate with responsibility for Petitioner's safety and has concerns about both the safety of the Petitioner and the safety of the community.

VI. CONCLUSION

For the foregoing reasons, Petitioner has failed demonstrate a likelihood of success on the merits. The Defendants request that Petitioner's Motion for a Preliminary Injunction be denied.

Respectfully Submitted,

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CERTIFICATION OF SERVICE

I hereby certify that on January 5, 2026, a copy of the foregoing Opposition was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/
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