

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

M.S., A MINOR, AND CLEANTE	:	No. 3:25-cv-02170(VDO)
STENOR, AS NEXT FRIEND,	:	
Petitioners,	:	
	:	
v.	:	
	:	
ANGIE SALAZAR, ACTING DIRECTOR	:	
OF THE OFFICE OF REFUGEE	:	
RESETTLEMENT, ET AL.,	:	January 23, 2026
Respondents.	:	

**RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION
TO PETITIONERS' MOTION FOR PRELIMINARY INJUNCTION/
TEMPORARY RESTRAINING ORDER (ECF NO. 18)**

Respondents, Angie Salazar in her official capacity as Acting Director of the Office of Refugee Resettlement, Alex J. Adams in his official capacity as Assistant Secretary, Administration for Children and Families, and Robert F. Kennedy, Jr., in his official capacity as Secretary of Health and Human Services, ("Respondents") submit this memorandum of law in opposition to Petitioners' Motion for Preliminary Injunction/Temporary Restraining Order (ECF No. 18) ("Motion").

I. PRELIMINARY STATEMENT

Petitioners challenge the Department of Health and Human Services Office of Refugee Resettlement's ("ORR" or the "Agency") decision to deny Ms. Stenor's sponsorship application for M.S. Despite the varied claims Petitioners present in the Verified Petition For Writ of Habeas Corpus And Complaint For Injunctive And Declaratory Relief (ECF No. 1) ("Petition") and instant Motion, at bottom, the instant civil action seeks Article III judicial review of a final agency decision. Such claims are governed by the Administrative Procedures Act, 5 U.S.C. §§ 555, 701 *et seq.* ("APA"), which limits judicial review in this case to the certified administrative record

(filed under seal at ECF Nos. 61-69) (“CAR” or “record”). As set forth below and in the CAR and attached supporting declaration, ORR processed the subject sponsorship application in accordance with applicable laws and regulations and made a considered decision about M.S.’s placement based upon all the circumstances. The decision was not arbitrary or capricious. Petitioners cannot establish a likelihood of success on the merits. The Motion should, therefore, be denied.

II. RELEVANT BACKGROUND

A. Governing Statutory & Regulatory Framework

ORR’s goal is to release unaccompanied 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* Declaration of Toby Biswas, attached as **Exhibit A** (“Biswas Decl.”) ¶ 4; 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, with concurrent duties to ensure releasees’ safety. *See* Biswas Decl. ¶ 5; 45 C.F.R. § 410.1203(a). The statutory and regulatory framework governing the federal care and custody of UAC, as well as their release and sponsorship, reflects Congress’s 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). This 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).

1. Homeland Security Act of 2002 (“HSA”)

In 2002, Congress enacted the Homeland Security Act (“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 responsibility for the care and placement of UAC from INS to ORR. *See* 6 U.S.C. §§ 279(a), (b)(1)(A), (g)(2).

The HSA defines an 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.”¹

6 U.S.C. § 279(g)(2). The HSA 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.

There is no dispute in this case that M.S. is an UAC.

2. The Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”)

Congress enacted the Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”) to strengthen protections for UAC and support their safe repatriation or appropriate

¹ 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.

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 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)-(c); Biswas Decl. ¶¶ 6-11.

3. The Foundational Rule (2024)

In April 2024, ORR promulgated the Unaccompanied Children Program Foundational Rule (“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 Agreement² (“FSA”) relevant to ORR’s care and custody of UAC and conditionally

² *See Reno v. Flores*, 507 U.S. 292, 294-95 (1993). At the heart of the *Flores* litigation was the practices of the legacy 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.”

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 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). *See also* Biswas Decl. ¶¶ 6-11.

Id. at 295-96 (internal quotation marks omitted). Plaintiffs' lawsuit challenged this policy and sought to compel the release of unaccompanied minors to non-parental guardians or private custodians; 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." *Id.* at 296, 302. The FSA, reached by the parties in 1996 to resolve the case, 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 HHS, on the basis of ORR's publication of regulations implementing the FSA). The few remaining paragraphs of the FSA still applying to HHS do not pertain to ORR release processes (e.g., sponsor vetting processes). *See id.* at * 9.

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 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,” “which may include a criminal history check based on fingerprints. *Id.* The Foundational Rule reinforces the congressional intent articulated in the HSA and TVPRA that HHS ensure the protection of UAC from human traffickers and release UAC only to sponsors who are capable of protecting their well-being. 45 C.F.R. § 410.1003.

B. ORR Release Policies & Practices

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 forth in ORR’s publicly available UAC Bureau Policy Guide³ (“UACB Policy Guide”). A full assessment of a potential sponsor’s suitability is necessary 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 the UAC after the UAC has been released from ORR custody; once a child is released, ORR has no ability to resume custody. *See* UACB Policy Guide § 2.1; Biswas Decl. ¶ 7. ORR takes children into its custody only upon referral by another federal agency, as described in statute. *Id.* In this regard, ORR is very different from state child welfare agencies, which typically retain such authority post-placement, and must front-load child safety considerations in its identity verification and sponsor-vetting policies. *See id.*

³ *See* ORR Unaccompanied Alien Children Bureau Policy Guide, available at <https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide>. (last visited Jan. 14, 2026).

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; Biswas Decl. ¶¶ 6, 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. *Id.* §§ 2.2.2, 2.4. *See also* Biswas Decl. ¶¶ 8-11.

There are four categories of potential sponsors:

- **Category 1**, consisting of parents or legal guardians;
- **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;
- **Category 2B**, consisting of immediate relatives (including biological relatives and relatives through marriage) who did not previously serve as a primary caregiver; and
- **Category 3**, consisting of other sponsors, such as distant relatives and unrelated adult individuals.

UACB Policy Guide § 2.2.1; Biswas Decl. ¶ 8. Sponsorship assessment requirements, disqualifying factors, notice requirements, and appeal rights vary based upon the sponsor's category. *See, e.g.*, UACB Policy Guide §§ 2.2.4 (documentation requirements), 2.4.2 (home study requirements), 2.5.1 (background check requirements), 2.7 (deadlines for recommendations and decisions on release), 2.7.4 (differing standards to deny release requests), 2.7.7 (differing standards for notice), 2.7.8 (appeal rights). *See also* Biswas Decl. ¶¶ 8-16.

C. Relevant Factual History

M.S. was admitted to ORR care on September 27, 2024. He came to ORR care along with two female UAC reported to be his siblings, D.F.S. and N.F.S., after the Department of Homeland Security Customs and Border Protection (“CBP”) determined they were inadmissible. Biswas Decl. ¶ 17; CAR 172-76. M.S. was placed in New Life Foster Family Agency in California on September 27, 2024. Biswas Decl. ¶ 18; CAR 1575-76. After M.S.’s initial placement, ORR began its normal sponsor identification and vetting process, consistent with its responsibility to make continuous efforts to release unaccompanied alien children to appropriate sponsors. This included reviewing the birth certificate M.S. presented at the time of his apprehension and transfer into ORR custody, which listed Duronel Stenor (D.S.) as his father and Ms. Stenor as his mother. Biswas Decl. ¶ 19; CAR 2353-55 (Original Birth Certificate, defined below, and translation), 330-31; *see also* Petition ¶¶ 29-30.

As of September 27, 2024, ORR had identified an individual who could potentially sponsor M.S.: D.S., who identified himself as M.S.’s father. Biswas Decl. ¶ 20; CAR 2076-86. Ms. Stenor is married to D.S. Biswas Decl. ¶ 27; CAR 2080. As of October 4, 2024, D.S. had completed a sponsorship application package for M.S. Biswas Decl. ¶ 21; CAR 1565-68, 2076-86. ORR relied on information from the sponsor application and M.S.’s proffered birth certificate CAR 2353-55 (Original Birth Certificate, defined below, and translation), to initially identify D.S. as Category 1 sponsor (parent or legal guardian). Biswas Decl. ¶ 21.

On or about September 30, 2024, ORR sent M.S.’s birth certificate (along with D.F.S.’s and N.F.S.’s birth certificates) for translation. Biswas Decl. ¶ 22. ORR received the translated birth certificate for M.S. on October 3, 2024. *Id.*; CAR 2353-55. At this time, the translator noted the document appeared to be “questionable”; specifically, the translator noted that the heading on

M.S.'s birth certificate had the same Certificate Number, Register Number, and Page Number as that of D.F.S.'s birth certificate; the two certificates differed only by calendar year (2012 versus 2013). *See id.*; CAR 330-31. The translator noted additional inconsistencies in dates included within the birth certificate and raised that the language between the birth certificates, including the names of witnesses, were exactly the same and that they considered this to be unusual. Biswas Decl. ¶ 22; CAR 331. On October 8, 2024, ORR initiated the consular verification process for these documents; despite multiple attempts, ORR was not able to verify the birth certificate. *See* Biswas Decl. ¶ 23; CAR 750, 786, 2373-78. Based on the information available to it, ORR determined that M.S.'s birth certificate was likely fraudulent. Biswas Decl. ¶ 23; CAR 330-31.

On or about October 24, 2024, after it determined that consular verification of the birth certificate would not be possible, ORR sought DNA testing to confirm D.S.'s parentage of M.S. Biswas Decl. ¶ 25; CAR 325-26, 750-51. ORR received the DNA testing results on November 20, 2024; the test results confirmed a 0.0% biological match between the M.S. and D.S. (D.S. is not M.S.'s biological father). *Id.* D.S. reported that he had believed he was M.S.'s biological father, based on information provided to him by M.S.'s biological mother. Biswas Decl. ¶ 25; CAR 283. At the same time, D.S. had become combative and ceased cooperating with ORR. *See* CAR 282-83, 1509. D.S. subsequently withdrew his sponsorship application for M.S. Biswas Decl. ¶ 26; CAR 750-53, 1565-68.

D.S. also withdrew his applications to sponsor D.F.S. and N.F.S., who were confirmed to be his biological daughters, after a home study revealed child safety concerns due to potential abuse or neglect of a minor in D.S.'s home. *See* Biswas Decl. ¶ 24; CAR 750-53, 791 (minor child reporting that D.S., his father, disciplines him using a belt). ORR's home study provider filed a

CPS report, but Florida CPS chose not to take the case as it did not meet their criteria for abuse or neglect. *See* Biswas Decl. ¶ 24; CAR 752.

Ms. Stenor then submitted applications to sponsor D.F.S. and N.F.S. (her biological daughters), and M.S. (to whom Ms. Stenor has no biological or legal relationship). *See* Biswas Decl. ¶ 28; CAR 1775-1803. With respect to the sponsorship of D.F.S. and N.F.S., ORR classified Ms. Stenor as a Category 1 sponsor because she is their parent. Since there was no CPS finding against D.S. for abuse or neglect, and Ms. Stenor was responsive to safety planning protocols, ORR did not have child welfare concerns in releasing D.F.S. and N.F.S. to Ms. Stenor and D.F.S. and N.F.S. were released to her care on or about April 1, 2025. *See* Biswas Decl. ¶ 29; CAR.

With respect to the sponsorship of M.S., ORR classified Ms. Stenor as a Category 3 sponsor because she is an adult who is unrelated to M.S. as she is not M.S.'s parent or legal guardian (Category 1), or a biological relative or relative through marriage (Category 2A or Category 2B). *Biswas Decl. ¶ 27.* On July 7, 2025, M.S. was transferred to The Children's Community Program of Connecticut, an ORR-funded long-term foster care placement.⁴ *Biswas Decl. ¶¶ 18, 29; CAR 1575-78.*

On September 4, 2025, Ms. Stenor reopened her sponsorship application for M.S. *See* CAR 2101-02 (synopsis). As a Category 3 sponsor, Ms. Stenor was required to provide verifiable documentation demonstrating a preexisting relationship with M.S. or his family and was subject to enhanced vetting procedures. *See* UACB Policy Guide § 2.2.4.

In support of her application to sponsor M.S., Ms. Stenor submitted a different birth certificate for M.S. than the original birth certificate M.S. had provided upon admission to ORR custody (CAR 2353-55 (the "Original Birth Certificate")). The new birth certificate submitted by

⁴ To date, M.S. remains in the same foster placement where he lives with a family and attends public middle school.

Ms. Stenor listed a different biological mother for M.S., “Rositta Pierre.” *See* Biswas Decl. ¶ 29; CAR 2358 (the “New Birth Certificate”), 2361 (translation), 754 (synopsis). The New Birth Certificate, when compared to the Original Birth Certificate, listed a different Certificate Number, Register Number, and Page Number. *See id.* ORR again attempted to have the New Birth Certificate verified by the Haitian Embassy, but did not receive a response after multiple attempts. *See* Biswas Decl. ¶ 29; CAR 2365-71, 2379-85.

ORR identified significant concerns during the sponsorship vetting process for Ms. Stenor. Among them:

That Ms. Stenor had originally been identified as M.S.’s mother, on D.S.’s sponsor application and on the fraudulent Original Birth Certificate. *See* Biswas Decl. ¶ 30; CAR 1485-86, 2516-17.

That Ms. Stenor was unable to provide verifiable documentation of a preexisting social relationship with M.S. consistent with UACB Policy Guide §2.2.4. *See* Biswas Decl. ¶ 30; CAR 214, 217-18, 1487, 2516-17. It is undisputed that Ms. Stenor has not seen M.S. in person since 2015. *See* 12/31/25 Hr’g Tr. 13-14; CAR 756.

That there existed discrepancies in Ms. Stenor’s own proffered birth certificate, which appeared to have been registered in Haiti on April 7, 1973, nineteen months prior to her birth date of [REDACTED] *See* Biswas Decl. ¶ 30; CAR 2225-26 (birth certificate and translation), 2516-17.

That there was limited verifiable family history, with ORR unable to contact the grandparents M.S. had purportedly been living with to confirm Ms. Stenor’s claim that M.S.’s biological mother, Rositta Pierre, had died. ORR was unable to confirm the identity of M.S.’s

biological mother, or whether M.S.’s biological mother was alive. *See* Biswas Decl. ¶ 30; CAR 213-15, 218, 220, 786, 1460-72, 1489, 2516-17.

Based on the information available to it at that time, ORR decided to deny Ms. Stenor’s application to sponsor M.S. *See* CAR 1491-97, 2423-24; 2516-18.

On November 20, 2025, ORR informed Ms. Stenor that her sponsorship application was denied, citing to the Original Birth Certificate for M.S., which falsely identified her as M.S.’s mother. *See* CAR 3000; Biswas Decl. ¶ 31; *see also* Petition ¶¶ 29-30, 69, 91. As a Category 3 sponsor, this fraudulent documentation disqualified Ms. Stenor from sponsorship. *See* UACB Policy Guide § 2.7.4 (ORR “*will* deny release to a Category 2 or Category 3 potential sponsor, if . . . [t]he potential sponsor or a member of the potential sponsor’s household . . . knowingly provided false information, committed perjury, or submitted fraudulent documentation during the sponsor assessment process” (emphasis added)).

As a Category 3 sponsor, M.S. was not entitled to a written decision enumerating ORR’s reasons for denial of her sponsorship application; instead, she was entitled to (and did receive) a telephone call informing her of the decision. *See* UACB Policy Guide § 2.7.7; Biswas Decl. ¶ 31; CAR 3000; Petition ¶ 69.

There is no right of agency appeal for a Category 3 sponsor. UACB Policy Guide § 2.7.8. *See also* 45 C.F.R. § 410.1206(a) (appeal rights are reserved for a *denied parent or legal guardian or close relative* potential sponsor). Nor is there any specific policy or regulation that bars a denied sponsor from reapplying to sponsor the same child. Biswas Decl. ¶ 31. Indeed, Ms. Stenor was encouraged to reopen her application. *See* CAR 185.

III. STANDARD OF REVIEW

In the Second Circuit, the standard for issuing a temporary restraining order (“TRO”) is the same as the standard for 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). “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.”).

This 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.”). 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).

IV. ARGUMENT

Setting aside the labels chosen by Petitioners, the *substance* of their claims is this: Petitioners seek Article III judicial review of a final agency decision. They ask this Court to set aside ORR's decision to deny Ms. Stenor's sponsorship application, and compel the agency to act by releasing M.S. into Ms. Stenor's custody. Such claims are governed by the APA, under which the scope of judicial review is presumptively limited to the record compiled by the administrative agency. *See* 5 U.S.C. § 706; *Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 743-44 (1985). As set forth herein and in the CAR, ORR processed the subject sponsorship application in accordance with applicable laws and regulations, examining the relevant data and articulating an explanation for its actions. The CAR contains documentation substantiating the challenged agency decision. ORR's conduct was not arbitrary or capricious, as Petitioners must establish to prevail. Petitioners cannot establish a likelihood of success on the merits. Petitioners' Motion should, therefore, be denied.

A. The APA Governs Petitioners' Claims In This Case, Presumptively Limiting Judicial Review – Including Adjudication Of The Instant Motion – To The CAR

Regardless of the specific arguments advanced in support of a request for judicial review (including habeas, constitutional, or statutory infirmities), the APA serves as the general basis for an "aggrieved" individual⁵ to seek judicial review of a final agency decision or to compel agency action. *See* 5 U.S.C. § 706(2). The APA presumptively limits judicial review to the administrative

⁵ Respondents note the Court's query during the December 31, 2025 telephonic hearing regarding Ms. Stenor's standing, or lack thereof, to bring claims on behalf of M.S. *See* Dec. 31, 2025 Hr'g Tr.48:1-18. Respondents do question Ms. Stenor's standing and reserve their rights to challenge standing as may become appropriate. Respondents further note that "the plaintiff asserting subject matter jurisdiction has the burden of proving by a preponderance of the evidence that it exists." *Lockett v. Bure*, 290 F.3d 493, 497 (2d Cir. 2002).

record, 5 U.S.C. § 706, which is produced in this case at ECF Nos. 61-69.⁶ An agency's "designation of the Administrative Record . . . is entitled to a presumption of administrative regularity . . . absent clear evidence to the contrary." *Merritt Parkway Conservancy v. Mineta*, 424 F. Supp. 2d 396, 404 (D. Conn. 2006) (citing *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971)). "The focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court." *Camp v. Pitts*, 411 U.S. 138, 141 (1973). "When a reviewing court considers evidence that was not before the agency, it inevitably leads the reviewing court to substitute its own judgment for that of the agency." *Almaklani v. Trump*, 444 F. Supp. 3d 425, 431 (E.D.N.Y. 2020) (citing *Asarco, Inc. v. U.S. Env't Prot. Agency*, 616 F.2d 1153, 1160 (9th Cir. 1980)). 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*, 254 F. Supp. 3d at 162 (denying request for additional discovery beyond the administrative record; noting that adding constitutional claims in an APA case "cannot so transform the case that it ceases to be primarily a case involving judicial review of agency action."); *Lucas R.*, 2018 WL 7200716, at *7 n.12) (TVPPRA does not create an independent cause of action separate from the APA).

Under the APA, a reviewing court shall "hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise

⁶ The CAR returned in this case includes "all ORR records related to [M.S.]" in accordance with the Court's order at ECF No. 58. This includes not only Ms. Stenor's second sponsorship application, at issue in the instant case, but also D.S.'s sponsorship application (withdrawn by D.S.) and Ms. Stenor's first sponsorship application (withdrawn by Ms. Stenor). Respondents note further that ordinarily, "[p]redecisional and deliberative documents are not part of the administrative record." *Oceana, Inc. v. Ross*, 920 F.3d 855, 865 (D.C. Cir. 2019). However, the CAR in this case may contain such documents; Respondents hereby reserve their right, as may be necessary, to argument regarding inadmissibility of such document(s) in future litigation.

not in accordance with law.” 5 U.S.C. § 706(2)(A). The district court’s scope of review under the deferential “arbitrary and capricious standard” is “narrow.” *Dep’t of Com.*, 139 S.Ct. at 2569 (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, (1983)). Agency action is arbitrary and capricious when it fails to “examine the relevant data and articulate a satisfactory explanation for its action” or when it has “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *State Farm*, 463 U.S. at 43-44. The district court thus “determine[s] only whether the [agency] examined ‘the relevant data’ and articulated ‘a satisfactory explanation’ for [its] decision, ‘including a rational connection between the facts found and the choice made.’” *Dep’t of Com.*, 139 S.Ct. at 2569 (quoting *State Farm*, 463 U.S. at 43, 103). The reviewing court may not substitute its judgment for that of the agency, *id.*, but must confine itself to determining whether the agency has engaged in “reasoned decisionmaking,” *Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 374 (1998).

Respondents note that the Petition contains eight numbered “claims for relief”:

1. “Habeas Corpus” (*see* ECF No. 1, p. 22)
2. “Violation Of Fifth Amendment Right To Substantive Due Process” (*id.* p. 23)
3. “Violation Of Fifth Amendment Right To Procedural Due Process” (*id.* pp. 23-24)
4. “Violation Of The *Flores* Settlement Agreement” (*id.* pp. 24-25)
5. “Violation Of Section 235 Of The Trafficking Victims Protection Reauthorization Act, 8 U.S.C. § 1232” (*id.* p. 25)
6. “Violation Of The Administrative Procedures Act” (*id.* pp. 25-26)
7. “Violation Of The *Accardi* Doctrine” (*id.* pp. 24-25)
8. “Release Pending Adjudication” (*id.* pp. 27-28)

The habeas and constitutional claims are discussed below with the APA claim.

As to claims 4 and 5: Neither the FSA nor the TVPRA create independent causes of action against the Federal Government that are separate from the APA. 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) ("waiver of the Federal Government's sovereign immunity must be unequivocally expressed in statutory text"); *Lucas R. v. Azar*, No. CV 18-5741-DMG (PLAX), 2018 WL 7200716, at *7 n.12 (C.D. Cal. Dec. 27, 2018). Neither does the FSA. *See* discussion above in Sec. II.A.3 & n.2. *See also* *Cooke v. United States*, 918 F.3d 77, 81 (2d Cir. 2019) ("[t]he United States, as sovereign, is immune from suit unless it waives immunity and consents to be sued."); *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.' . . . [F]ederal 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.") (quoting *Durant, Nichols Houston, Hodgson & Cortese-Costa P.C. v. Dupont*, 565 F.3d 56, 62 (2d Cir. 2009)).

As to claim number 7, alleging violation of the *Accardi* doctrine (requiring agencies to follow their own regulations): There is no standalone, independent claim for an alleged *Accardi* violation. This generally is treated as a legal claim challenging agency action under the APA.

Claim number 8 is a statement of the relief sought, not a legal cause of action.

B. ORR's Custody of M.S. Is Lawful

This case differs fundamentally from a standard habeas petition because “juveniles, unlike adults, are always in some form of custody.” *Reno v. Flores*, 507, U.S. 292, 302 (1993). Our Supreme Court has held that “where the custody of the parent or legal guardian fails . . . [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) (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”). The TVPRA reinforces and expands upon ORR’s responsibility for the care of UAC. Unlike adults in the custody of other agencies, ORR cannot release children in its care on their own recognizance. See U.S.C. § 279(b)(2)(B); Biswas Decl. ¶¶ 6-7. Instead, the TVPRA requires ORR to make a considered decision about each child’s placement based upon all the circumstances. See *id.* In this case, ORR has done exactly that. See CAR (ECF Nos. 61-69); Biswas Decl. ORR’s custody of M.S. is not unlawful. To the contrary, it is *required* by the law.

As detailed in the factual timeline outlined above in Section II.C, from the time M.S. entered ORR’s care the agency worked to find a suitable sponsor to care for him. As a Category 3 sponsor for M.S., Ms. Stenor is subject to enhanced vetting procedures. See discussion in Sections II.B-C, above. This vetting process raised significant concerns for ORR. Beyond the fraudulent Original Birth Certificate, the additional concerns documented by ORR and enumerated in the CAR include: that previous applications had falsely identified Ms. Stenor as M.S.’s parent (specifically, his “mother”); that ORR could not verify the authenticity of the New Birth Certificate; that ORR could not confirm the identity of M.S.’s biological mother or that she had died; that the birth certificate Ms. Stenor submitted as her own was suspicious and indicated fraud;

and that Ms. Stenor was unable to provide verifiable documentation of a preexisting social relationship with M.S.

Petitioners' claims of "bad faith" and/or arbitrary and capricious action rely almost exclusively on comparisons drawn between ORR's adjudication of Ms. Stenor's application to sponsor N.F.S and D.F.S (her biological daughters with D.S.), wherein Ms. Stenor was deemed a Category 1 sponsor and ORR granted the applications; and ORR's adjudication of Ms. Stenor's application to sponsor M.S., to whom she has no legal or biological relationship and thus was considered a Category 3 sponsor. *See, e.g.*, Petition ¶¶ 72, 85, 87. This argument ignores an essential reality: sponsorship assessment requirements, disqualifying factors, notice requirements, and appeal rights differ significantly for Category 1 and Category 3 sponsors. *See, e.g.*, UACB Policy Guide §§ 2.2.4 (documentation requirements), 2.4.2 (home study requirements), 2.5.1 (background check requirements), 2.7 (deadlines for ORR's recommendations and decisions on release), 2.7.4 (differing standards to deny release request), 2.7.7 (differing standards for notice), 2.7.8 (appeal rights).

ORR denied Ms. Stenor's application to sponsor M.S., citing the fact that D.S. (Ms. Stenor's husband and a member of her household) had previously submitted a false birth certificate for M.S., which identified Ms. Stenor as M.S.'s mother. *See* CAR 3000; Biswas Decl. ¶ 31; *see also* Petition ¶¶ 29-30, 69, 91. As a Category 3 sponsor for M.S., this fraud was disqualifying for Ms. Stenor. *See* UACB Policy Guide § 2.7.4 (ORR "*will* deny release to a Category 2 or Category 3 potential sponsor, if . . . [t]he potential sponsor or a member of the potential sponsor's household . . . knowingly provided false information, committed perjury, or submitted fraudulent documentation during the sponsor assessment process" (emphasis added)). The denial was mandatory, not permissive as it would have been for a Category 1 sponsor. *See id.*

To the extent that Petitioners challenge the UACB Policy Guide, and inasmuch as ORR policy may have changed, agency action is not subject to a heightened or more searching standard of review simply because it represents change in policy. *See F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 514-15 (2009).

As a Category 3 sponsor, Ms. Stenor was not entitled to a written decision enumerating the reasons for ORR's denial of her sponsorship application for M.S.; instead, she was entitled to (and did receive) a telephone call informing her of the decision. *See* UACB Policy Guide § 2.7.7; CAR 3000; Biswas Decl. ¶ 31; Petition ¶ 69.

C. ORR's Custody Of M.S. Does Not Run Afoul Of The Constitution

ORR's custody of M.S. does not run afoul of the Constitution. Petitioners cannot prevail on any claim for violation of the Due Process Clause. In *Reno*, the Supreme Court found that children such as M.S. (for whom the placement sought is with neither a parent nor a close relative) have neither a substantive nor a procedural due process claim regardless of a *Mathews* analysis. *See* 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.>").

Petitioners in this case ask the Court to extend the nature of constitutional liberty interests in the familial sphere well beyond that which current authority provides. *See, e.g., Troxel v. Granville*, 530 U.S. 57, 65-66 (2000) (biological parent); *Santosky v. Kramer*, 455 U.S. 745, 758-59 (1982) (biological parent); *Lassiter v. Dep't of Soc. Servs. of Durham Cray*, 452 U.S. 18, 27 (1981) (biological parent); *Moore v. E. Cleveland*, 431 U.S. 494 (1977) (grandparent/grandchild); *Smith v. Org of Foster Families for Equal. & Reform*, 431 U.S. 816, 843 (1977) (foster

parents/legal guardians); *Prince v. Massachusetts*, 321 U.S. 158 (1944) (aunt and legal custodian); *U.S. v. Loy*, 237 F.3d 251, 269-70 (3d Cir. 2001) (hypothetical biological parent); *Tenenbaum v. Williams*, 193 F.3d 581, 593 (2d Cir. 1999) (biological parent); *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977) (biological parent); *Benitez v. Miller*, 687 F. Supp. 3d 304, 318-19 (D. Conn. 2023) (biological parent); *J.S.R. by and through J.S.G. v. Sessions*, 330 F. Supp. 3d 731, 741 (D. Conn. 2018) (parents who crossed the border together with biological children).

This is not a case where ORR has maintained custody of a child without issuing a decision on a pending application for sponsorship. ORR issued its decision denying Ms. Stenor's application to sponsor M.S. months ago. Petitioners are afforded process now via their APA challenge of the Agency's decision. The fact that Petitioners seek release as a remedy does not alter the procedural posture or fact that they appeal from a final agency decision.

V. CONCLUSION

For the foregoing reasons, Petitioners have failed demonstrate a likelihood of success on the merits. Petitioners' Motion should, therefore, be denied.

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