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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

G.M.M., a minor, et al.,

Petitioners,

v.

JESSICA BELTRAN, et al.,

Respondents.

No. 5:26-cv-00085-SVW-PVC

RESPONDENTS' ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

[Declaration of Toby Biswas filed concurrently Herewith]

I. INTRODUCTION

On January 8, 2026, minor petitioners G.M.M., B.F.C.A, F.L.C., M.L.C., N.L.C., K.J.V.D.L.C., and J.I.D.R (the "Petitioners") filed a petition for writ of habeas corpus (the "Petition") [Dkt. no. 2] through counsel. The Petitioners are Unaccompanied Alien Children (UACs) who, having arrived in the United States without accompanying guardians and without apparent lawful status, were transferred to the supervision of the Office of Refugee Resettlement (ORR), which in turn arranges for their care at ORR-subcontracted facilities.

By order dated January 12, 2026 [Dkt. no. 10], the Court ordered a response to the Petition within ten days, i.e. by January 22, 2026. The Respondents hereby respond.

As a threshold procedural matter, the minor petitioners should be represented by a guardian ad litem in connection with the Petition. The Court appropriately issued an order addressing this issue [Dkt. no. 7]. While the Petition purports to be brought and filed by the minor Petitioners, that cannot be the case, particularly considering their ages. Minors are not automatically represented by the counsel who may choose to file a petition at the behest of their parents. To the extent their parents have sought the release of minor UACs from ORR, they should at the outset have sought to be appointed guardian ad litem to bring claims on the minors' behalf. Or, alternatively, they should have filed a suit in their own names requesting adjudication of the applications at issue.

Petitioners' counsel has filed a response in which they claim to represent the Petitioners because they are "pro bono counsel." [Dkt. no. 9]. It is unclear why that would make a difference. They must be found to represent the *minors*, by Court approval, rather than just self-appointing themselves, through a claimed "next friend" or otherwise (who appears to be acting on behalf of the parents, in reality, and not the minor children, which is a conflict). Indeed, a "next friend" of numerous unrelated people is not really a friend, but rather a legal fiction.

Turning to the merits, at the outset, the seven Petitioners are certainly not all equally situated in their adjudication delay claims, and it is improper to aggregate their claims into one habeas petition—just as one cannot file a mass *Zadvydas* habeas petition for i detainees with final removal orders. **To start with the most obvious point, two of the Petitioners—Petitioner G.M.M. and Petitioner J.I.D.R.—have been transferred to sponsors; their claims are moot.** *See* Declaration of Toby Biswas, ¶¶ 18-19.

Petitioners err in asserting that there is a single overarching shared legal issue.

The other individual Petitioners' claims involve complex histories of communications, along with problems such as their applicant parents submitting fraudulent documentation to ORR, which (as one might expect) delays the processing of their applications. *See* Biswas Decl., ¶¶ 20-76. There is not an overarching legal issue of 'unlawfulness' that can be resolved in a combined habeas proceeding.

Instead, the Petition primarily complains about *unwarranted delay* by the Respondents in making decisions on the merits of certain applications filed by the varied parents of the varied UAC Petitioners. The parent applicants who (to date) appear to be the actual litigants, are seeking to assume their custody and care after their minor children entered the country without any accompanying guardians and so were placed by ORR. Specifically, the Petitioners' parents have filed different Family Reunification Applications (FRA), which are part of the process required for placing UACs in the care of a sponsor, including their parents, adoptive parents, or relatives.

In essence, the Petition asserts excessively delayed application processing relative to the pending requests to put UAC minors in the custody of an *applicant sponsor*, their parent. Parents of UACs are classified as "Category 1" applicants by ORR policy. But the Petition's vague complaints about adjudicative *delay*, which vary in their details and extent between the Petitioners, do not establish that the current state of custody is *unlawful*. Habeas jurisdiction is not a means for complaining about various terms of custody. *See Pinson v. Carvajal,* 69 F.4th 1059, 1077 (9th Cir. 2023) ("Because

[petitioner's] claims lie outside the historic core of habeas corpus, we conclude the district court properly found it lacked jurisdiction to hear [his] petition."), *cert. denied sub nom. Sands v. Bradley,* 144 S. Ct. 1382 (2024); *id.* at 1070 (explaining that "release from confinement is the only available remedy for claims at the writ's core").

Indeed, a delayed agency adjudication case is normally brought by the actual applicant via a mandamus or APA unreasonable delay claim, rather than in the guise of a habeas action putatively filed by a 'next friend.' Here, the Respondents are allowed to request various types of information about the prospective sponsors and to assess and decide their applications. *See* Biswas Decl., ¶¶ 20-76. Understanding that nobody likes delays, they do not establish unlawful custody. Here, with respect to the parents' demand for immediate release of their unaccompanied children, which has been incorrectly presented as if it were advanced by the Petitioners in a habeas context, the Petitioners have not shown that the UACs are currently being held in unlawful custody.

Accordingly, the Respondents submit that the Petition fails to carry the Petitioners' heavy burden to establish that the Petitioners' current custody by ORR is unlawful, such that compelling immediate release is the only available remedy. They should be required to exhaust the agency process first. Presumably that will soon moot their claims entirely, but in any event it will create a proper record.

II. LEGAL FRAMEWORK

A. The Homeland Security Act of 2002

With the enactment of the HSA, Congress created DHS and transferred most immigration functions formerly performed by INS to DHS and its components, including U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement ("ICE"). See HSA; Department of Homeland Security Reorganization Plan Modification of January 30, 2003, H.R. Doc. No. 108-32 (2003) (also set forth as a note to 6 U.S.C. § 542). Notably, Congress transferred to [ORR] the responsibility for the care of any UAC "who [is] in Federal

custody by reason of [his or her] immigration status." 6 U.S.C. §§ 279(a), (b)(1)(A). The HSA also transferred to ORR the responsibility for making all placement decisions for UACs, required ORR to coordinate these placement decisions with DHS, and required ORR to ensure that UACs are not released upon their own recognizance. See 6 U.S.C. §§ 279(b)(1)(C), (D), (b)(2).

B. The Trafficking Victims Protection Reauthorization Act of 2008

he TVPRA, which was signed into law on December 23, 2008, contains statutory protections relating to unaccompanied alien children (UACs) and codified protections related to the processing and detention of UACs. The TVPRA built on the split of duties in the HSA and further requires that "the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services." 8 U.S.C. § 1232(b)(1). It also provides that in most instances, "any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child." 8 U.S.C. § 1232(b)(3).

The TVPRA makes clear that HHS is responsible for all placement decisions for UACs in its custody, and for conducting suitability assessments for those placements. 8 U.S.C. § 1232(c). It requires that UACs in HHS custody be "promptly placed in the least restrictive setting that is in the best interest of the child," and it provides guidelines for the reunification of UACs with their families by HHS. 8 U.S.C. § 1232(c)(2), (3).

C. The Foundational Rule (2024)

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* ("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 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; UAC 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 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. ORR Release Policies and Practice

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 (UAC 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. Rather, ORR only takes children into its custody upon referral by another federal agency, as described in statute. In this regard, ORR is also very different from state child welfare agencies, which typically retain such authority post-placement. Accordingly, ORR must front-load child safety considerations in its identity verification and sponsor-vetting policies.

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." UAC Policy Guide § 2.1. There are four categories of potential sponsors: (1) Category 1, consisting of parents or legal guardians; (2) Category 2A, consisting of siblings, half-siblings, grandparents, immediate relatives (such as aunts, uncles, and cousins) who previously served as a primary caregiver, and other biological relatives and relatives through marriage; (3)

Category 2B, consisting of immediate relatives (including biological relatives and relatives through marriage) who did not previously serve as a primary caregiver; (4) Category 3, consisting of other sponsors, such as distant relatives and unrelated adult individuals. UAC Policy Guide § 2.2.1. ORR (through its care providers) conducts a suitability assessment of the potential sponsor, including a review of the sponsor's strengths, resources, risk factors, and special concerns within the context of each child's needs, strengths, resources, risk factors, and relationship to the sponsor. UAC Policy Guide §§ 2.2.2, 2.4.

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. UAC Policy Guide §§ 2.2.4, 2.5.

All potential sponsors must also submit proof of address, income, sponsor-child relationship, and criminal history documents (if applicable). UAC Policy Guide § 2.2.4. 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. UAC Policy Guide § 2.4.2.

Once the assessment of the potential sponsor is complete, the care provider makes a release recommendation. UAC Policy Guide § 2.7. 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. ORR makes the final release decision. UAC Policy Guide § 2.7. 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. ORR denies release if: (1) the potential sponsor is not willing or able to provide for the child's physical or mental

well-being; (2) the potential sponsor is not willing to complete the mandatory fingerprint check; (3) the physical environment of the home presents a risk to the child's safety or well-being; or (4) release of the UAC would present a risk to him or herself, the sponsor, household, or community. UAC Policy Guide § 2.7.4.

III. ARGUMENT

A. Prudential Administrative Exhaustion Should Be Required of the Petitioners, Particularly Because Two Have Been Released Already

Petitioners argue that their habeas claims are not subject to *mandatory* administrative exhaustion, but rather to *prudential* administrative exhaustion, and on that basis essentially attempt to skip past this issue, after acknowledging that they are subject to it. *See* Petition, pp. 20-21. Their Petition should be denied for this threshold reason.

Although exhaustion of administrative remedies is not a jurisdictional prerequisite for habeas petitions, courts generally "require, as a prudential matter, that habeas petitioners exhaust available judicial and administrative remedies before seeking [such] relief." *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001) (abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006)). The exhaustion requirement is subject to waiver because it is not a "'jurisdictional' prerequisite.'" *Id.*

Courts may require prudential exhaustion where: "(1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007).

This is particularly important where, as here, the claims of agency delay relate to relatively complicated procedural and factual history that varies widely between the Petitioners and their parent applicants, as set forth in the Biswa Declaration. It is as if the Petitioners had brought a set of aggregated habeas claims under *Zadvydas v. Davis*, 533

U.S. 678 (2001). That aggregation of habeas claims would be improper, because under *Zadvydas*, the details of the timing at issue normally matter.

Indeed, the fact that some Petitioners have already been transferred to their parents' care and supervision vividly illustrates this point. Specifically, Petitioner G.M.M. and Petitioner J.I.D.R. have already been transferred to sponsors, and their attempted habeas claims are thus moot because they are no longer in the Respondents' custody. *See* Declaration of Toby Biswas, ¶¶ 18-19. Establishing a putatively indefinite delay requires much more than complaining that the process is taking too long. Habeas jurisdiction is not a way to surmount unwanted delays in agency adjudicative process.

This case meets the elements for prudential exhaustion. ORR has special expertise in resolving FRAs pursuant to the complex procedural and legal requirements described above. Also, allowing a "relaxation of the exhaustion requirement" would promote the avoidance of complying with the FRA process, as well as encourage hiding or falsifying information in that process. Finally, the normal outcome of the FRA process is likely to resolve and moot the relief sought, at least for the majority of the Petitioners.

Accordingly, the Petitioners' parent applicants—who are behind this case—should not be permitted to circumvent the administrative process by filing habeas claims ostensibly brought by the minors through a self-appointed "*en masse* next friend." Again, while this Court has rightly ordered briefing on that issue [Dkt. no. 7], it is concerning that the Petition was filed as if it were brought by the minor Petitioners, without seeking to be appointed guardian ad litem to assert claims on their behalf. In filing the Petition via the putative "aggregate next friend," the parents essentially treated the UAC children as if they were *per se* already in their custody and control, rather than the minors being protected by an important *process* via which they can qualify as sponsors to take over the care and custody of the unaccompanied children.

B. The Petitioners Are Not Similarly Situated, and they Have Not Established Unlawful Detention by the Respondents

The Petitioners are not similarly situated, and their habeas claims are not properly brought by their parents in an aggregated "mass habeas" proceeding. Most obviously, two of them are already no longer at a facility, because they were already released to sponsors. *See* Biswas, Decl., ¶¶ 18-19. And the parents of the other Petitioners have FRAs in various states of process. *See* Biswas Declaration.

Petitioners cite Due Process concerns and argue that this confers habeas jurisdiction, but their delay claims are very different than *Zadvydas* habeas claims. The Petitioners are not being confined in immigration detention. They are settled at contracted facilities. Their complaint, through the asserted "next friend," is that their parents are not their immediately assigned immediate custodians.

Nor do Petitioners establish the type of indefinite custodial delay that the Supreme Court found to have raised significant Due Process issues in *Zadvydas*. There, the Supreme Court held that the burden shifts to the government, after six-months of presumptively reasonable detention pursuant to a final removal order, to produce evidence to show that removal is reasonably likely:

> After this 6–month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. This 6–month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.

Zadvydas, 533 U.S. at 701.

Here, the Petitioners are not being held in confinement of the type at issue in

Zadvydas. And the record is replete with the Respondents' continuing active processing of their FRAs. Indeed, two of the Petitioners have been released to sponsors already.

Understanding that all parental applicants would always prefer for their FRA processing to be faster, there are good reasons why processing may take more time in certain cases. For example, as the Biswas Declaration explains in detail, some of the applicant parents were uncooperative or submitted fraudulent documentation in connection with some FRAs. *See* Biswas Decl., ¶¶ 20-76.

For example, the sponsor applying for F.LC., M.L.C., and N.L.C. provided a false Social Security Card, and did not provide accurate identification information. *See* Biswas Decl., ¶ 23. Such concerning behavior slows down the processing of an application whereby a sponsor seeks to assume immediate custody of an unaccompanied minor.

The sponsor applying for K.J.V.D.L.C. went through identification process, but was discovered to have a household member who had a recent conviction in 2022 for conspiracy to transport illegal aliens, resulting in a negative Home Study report recommendation. *See* Biswas Decl., ¶ 36. That member was then confirmed to have moved out of the home. A positive sponsor suitability recommendation was then issued. However, the minor Petitioner then requested voluntary departure, seeking to return to their home country. *Id.*, ¶ 45. The sponsor applicant sent a letter withdrawing her request to sponsor in November of 2025. *Id.*, ¶ 46. The applicant then subsequently recanted, and withdrew her withdrawal. *Id.*, ¶ 48. In January of 2026, the sponsor applicant was contacted, and she indicated her desire to continue with the process. *Id.*, ¶ 51.

The sponsor applying for B.F.C.A. turned up with some criminal law issues in her background vetting process that required time to examine and obtain supporting documentation regarding. *See* Biswas Decl., ¶¶ 57-61. A negative recommendation was issued for this sponsor after a Home Study based on unresolved legal issues, financial instability, and household concerns. *Id.*, ¶ 62. The sponsor then relocated, but employment and income verification problems persisted. *Id.* ¶ 66. New domestic

violence police reports were received. *Id.* ¶ 67. Eventually new background checks had to be run because of the ongoing problems. While a home visit was completed on December 17, 2025 with no problems, the case was remanded for additional sponsor vetting at this time. *Id.* ¶¶ 74-76.

The details and the facts are important. ORR cannot abandon its processes because the parent applicants have been problematic in some respects, or because the factual circumstances and evidence evolve. Complaining about delays in such complex and fact-intensive proceedings does not come close to establishing *unlawfulness*.

Furthermore, while the parent sponsor applicants understandably now seek release of their children into their care, they conversely did not accompany their young children when they were entering the United States in the first place, which is why they were referred over to ORR as unaccompanied alien children, UACs. It was not the government who separated the parents from the children. ORR has an important role in the processing of FRAs, and that role cannot be set aside because applicants may not wish to cooperate or communicate with the government.

In sum, the Petition fails to establish that the Respondents are acting *unlawfully* by taking time to resolve the varied FRAs while some of the Petitioners remain in ORR custody at their contracted facilities. Rather the parent applicants for sponsorship are unhappy with the considerable length of time that their FRA processing has been taking—apart from the sponsors of the two Petitioners who have already been released. While understandable, that concern does not suffice to prove the kind of *immediate affirmative unlawfulness* that is required to prevail on a habeas petition.

IV. CONCLUSION

The Petition should be denied.

Respectfully submitted,

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