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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

O.J.R.A., S.A.R., and J.A.R., Minors, by and through Erica Santamaria, as Next Friend of Minors,

Petitioners,

v.

RUBY HERNANDEZ, Federal Field Specialist, Office of Refugee Resettlement, et al.,

Respondents.

No. 2:26-cv-00482-AB-PD

RESPONDENTS' ANSWER TO HABEAS PETITION

[Declaration of Toby Biswas filed concurrently herewith]

I. INTRODUCTION

The minor Petitioners in this matter are three unaccompanied alien children (UAC) who entered the United States on April 30, 2025, and were referred into the care and custody of the Office of Refugee Resettlement (ORR), which placed them into the care of Hanna's House Children's Homes. The Court has issued an order [Dkt. no. 14] requiring the Respondents to file an answer or motion to dismiss by February 3, 2026 [Dkt. no. 14]. Respondents hereby answer the Petition.[1]

This habeas action is brought by a putative 'next friend,' Erica Santamaria—who appears unrelated to the Petitioners. The 'next friend' complains of delays in the resolution of a sponsorship application filed five months ago by the Petitioners' biological mother, M.R.A. (i.e. four months after the unaccompanied Petitioners had entered the United States and been taken into ORR's custody and care)

As noted, the three Petitioners were unaccompanied children who entered the United States without guardians and who were referred over by another federal agency to ORR for their care and custody. And as explained below, ORR promptly identified M.R.A. as a potential sponsor and worked to try to arrange for a potential reunification, including providing application materials. Several months later, M.R.A. filed an application for custody, as a sponsor applicant. But the next friend now complains that this application has not been decided quickly enough. That complaint is not a valid basis for a habeas petition, and Petitioner fails to show that ORR's custody is unlawful.

That is not to say that M.R.A. is not an appropriate sponsor, and that her FRA will not be granted—it is that the process must be followed. ORR has important statutory and procedural requirements that it must follow before releasing the children within its care

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[1] The 'next friend' then also filed an *ex parte* TRO Application [Dkt. no. 11]. Respondents opposed [Dkt. no. 16], explaining that among other things, the Court had already set an expedited schedule for briefing and decision on the Petition, and the TRO Application failed to comply with numerous basic procedural and substantive requirements. That TRO Application has not yet been ruled on by the District Court.

and custody to applying sponsors. For example, the recent home study conducted for M.R.A. resulted in a negative recommendation due to its proximity to a registered sex offender. *See* Declaration of Emily Gerber Sugarman, ¶ 10 [Dkt. 11-2]. Petitioner's counsel disagrees with that concern, and believes the issue was not a significant problem for the children. *Id.* Such disagreements do not establish unlawful custody, however.

For unaccompanied minors, ORR cannot presume that a subsequent sponsor applicant, even when closely related (as with a biological mother), is able to adequately and properly take care of their needs. ORR must follow the proper processes and investigation. And while Ms. Santamaria insists that these minors must be released to M.R.A. *immediately*, these children were already separated from M.R.A. for many months (at minimum) before she applied as a sponsor to take them into her custody.

The applicable process needs to be followed and brought to a timely conclusion that will advantage the minor Petitioners at issue, ensuring their proper care and custody. Having failed to establish unlawful custody, the Petition should be denied.

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

The 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. FACTUAL AND PROCEDURAL BACKGROUND

As noted above, the three minor Petitioners entered the United States as unaccompanied children on April 31, 2025.

As set forth in the Declaration of Toby Biswas, filed herewith:

Petitioners O.J.R.A., S.A.R., and J.A.R. entered ORR custody on May 1, 2025, and were placed with Hanna's House in Commerce, California. At the time of initial placement, ORR began its normal sponsorship verification processes to process the children for release to a viable sponsor. This process continues. *Id.*, ¶ 18.

As of May 6, 2025, ORR identified the Petitioners' mother as a potential Category 1 sponsor ("Sponsor"). *Id.*, ¶ 19.

On May 23, 2025, ORR scheduled her for a fingerprint appointment. *Id.*, ¶ 20.

On that same date, ORR also identified the Petitioner's father as an Alternative Caregiver ("ACG") and a Household Member ("HHM)." *Id.*, ¶ 21.

On June 9, 2025, DNA testing was conducted for the Petitioners and the Sponsor. The results were received on July 3, 2025, positively confirming the relationship. *Id.*, ¶ 22.

On July 11, 2025, ORR identified Petitioners' maternal aunt as a potential Category 2 sponsor, since the Sponsor had no acceptable identity documents ("ID"). However, this potential sponsor subsequently withdrew from the process due to undisclosed criminal history. *Id.*, ¶ 23.

On July 17, 2025, ORR sent the Family Reunification Application (FRA) to the Sponsor. *Id.*, ¶ 24.

On July 22, 2025, a completed FRA was received from the Sponsor. *Id.*, ¶ 25.

On August 1, 2025, the Sponsor reported that she resigned from her employment. *Id.*, ¶ 26.

On August 14, 2025, the Sponsor confirmed using somebody else's Social Security number for employment purposes after providing a pay stub as proof of

income with visible social security tax deductions. At that time, the Sponsor did not possess a legally acquired SSN/ITIN. *Id.*, ¶ 27.

On September 16, 2025, the case was submitted for an ID waiver, pursuant to UACB Policy Guide section 2.2.4, because the Sponsor did not provide any of the acceptable forms of ID. *Id.*, ¶ 28.

On December 9, 2025, ORR approved a discretionary Home Study after identifying a registered sex offender residing on the same property as the Sponsor. *Id.*, ¶ 29.

On December 11, 2025, the ID waiver was granted pending the results of the discretionary Home Study. *Id.*, ¶ 30.

On December 22, 2025, the Home Study was completed with a negative recommendation based on the presence of a sex offender residing at the same property as the Sponsor. *Id.*, ¶ 31.

On January 2, 2026, clinicians at Hannas House met with the Sponsor to begin developing a proposed safety plan. *Id.*, ¶ 32.

On January 21, 2026, the Sponsor requested approximately one month to break her current lease and to move into a new property. In the alternative, the Sponsor would work on a supervision plan, including an additional ACG, if needed, to supervise children while the Sponsor is at work. *Id.*, ¶ 33.

The proposed safety plan was subsequently finalized, with the Sponsor reporting she would no longer be working and would serve as the primary caretaker and providing the supervision plan for the children. *Id.*, ¶ 34.

On January 27, 2026, due to the Sponsor's provision of fraudulent documents, namely the proof of income documents showing the Sponsor's use of a fraudulent social security number, this case was submitted for an "exception" to the otherwise mandatory denial requirement outlined in UACB Policy Guide § 2.2.4. These requests are considered on a case-by-case basis. *Id.*, ¶ 35.

Should this exception be granted, the ORR/FFS will be able to review the totality of evidence and supporting documentation provided by the sponsor and collected during the assessment process to make a decision as to whether the Petitioners' release would result in a danger to themselves or the community. *Id.*, ¶ 36.

IV. THE PETITION FAILS TO ESTABLISH UNLAWFUL CUSTODY

The Petition essentially presents a claim for unreasonable delay in ORR's processing of the biological mother's application for custody over the three Petitioners, i.e. a delayed decision on her FRA. That delay complaint, however, does not suffice to establish that the current custody is *unlawful* under habeas jurisdiction principles.

The three Petitioners were already unaccompanied when they entered the United States; they were not then in their mother's care. As set forth in the Biswas Declaration, ORR was then proactively seeking out, arranging for, and facilitating the mother's application starting very shortly after the unaccompanied minor Petitioners' arrival in the United States, identifying the mother as a potential sponsor as of May 6, 2025, and consistently facilitating the application process thereafter. *See* Biswas Decl., ¶¶ 18-26.

ORR also identified other potential sponsors for the Petitioners and investigated them, but they turned out to be unsuitable for various reasons. *Id.*

Following the receipt of the mother's completed FRA packet on July 22, 2025, it has taken time to go through ORR's process. The mother's repeatedly shifting employment and housing status, combined with her unfortunate failure to provide accurate and truthful identification documents, has delayed the process of deciding her application for custody over her unaccompanied children.

As the Biswas Declaration discusses, similar disruptive events continued. On January 21, 2026, the mother requested to break her current lease and move into a new property. *See* Biswas Decl., ¶ 33. The proposed safety plan was quickly finalized, *id.* ¶ 34, but again changes like that require time.

On January 27, 2026, the case was submitted for an exception to the mandatory denial requirement. *Id.*, ¶ 35. It is hoped that a decision will be made relatively soon. *Id.*

The Petition does not meet the requirement of showing *unlawfulness* in custody. Nowhere does it establish that the current custody arrangement is contrary to the law. The Petition argues that the Petitioners are in "detention," but being in federal custody of any kind is not inherently "detention" (to take an obvious example, individuals under supervised release are in 'custody' but they are not detained). Unaccompanied children may be placed by ORR in the care of various facility types pursuant to regulation, "including but not limited to shelters, group homes, individual family homes, heightened supervision facilities, or secure facilities, including RTCs" 45 CFR § 410.1102. Not being in a single preferred sponsor applicant's custody, i.e. that of the mother MRA, does not constitute "detention." Indeed, the Petitioners were not in their mother's custody for months (at minimum) before she even applied as a sponsor.

The Petition depicts the Petitioners' status of not being within their mother MRA's custody as if that is inherently an intolerable deprivation of their liberty. Placing children into the care of immediate family members is normally an ideal outcome when possible. But insofar as the Petition portrays the existing status quo as a grave violation of their liberty, again, the minor Petitioners were already unaccompanied and separated from their mother when they entered the United States. That status quo was not the government's decision. It was, presumably, their parents' decision. It was how they arrived into the United States. In response, ORR promptly took affirmative steps to locate sponsors, including their mother, and to facilitate the application process so that they could be *released* to those potential sponsors. *See* Toby Biswas Declaration.

Insofar as the TRO Application portrays any delay in processing the FRA as if that is inherently endless and unlawful, it is also noteworthy that in another recent habeas petition filed in this District, involving nine different minor petitioners from multiple families making similar claims against ORR, almost all of the many petitioners were

thereafter released to sponsors, on a relatively prompt timeframe, mooting their claims as their applications were resolved in due course. *See G.M.M. et al. v. Jessica Beltran et al.*, 5:26-cv-00085-SVW-PVC. The application process does take time, particularly when specific sponsor applicants have significant problems or shifting life circumstances (as with MRA here), but that does not render the custody of ORR unlawful.

While the 'next friend' portrays any delayed processing in a sponsorship cases as if that was inherently endless and a violation of Due Process, that is not true, and it again ignores the preexisting underlying state of affairs that created the status quo: Unaccompanied minors entering the United States without guardians, before being referred by another federal agency to ORR.

The timely processing of applications is an important goal, particularly when it bears on children. But a habeas petition is not a mechanism for asserting a delayed processing claim. The Petition wholly fails to meet its extremely heavy burden of proving *unlawfulness* in the Petitioners' current custody.

V. CONCLUSION

The Petition should be denied.

Dated: February 3, 2026

Respectfully submitted,

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