UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

K.A.P.L. Petitioner, v. ANGIE SALAZAR, in her official capacity as ACTING DIRECTOR OF THE OFFICE OF REFUGEE RESETTLEMENT, *et al.*, Respondents.	)	No. 26 C 2477 Judge Alexakis

RESPONDENTS' MEMORANDUM
RESPONSE IN OPPOSITION TO PETITION AND
MEMORANDUM IN SUPPORT FOR PETITION FOR WRIT OF HABEAS CORPUS

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Introduction

This is a habeas case where the petitioner, K.A.P.L., is a 13-year-old citizen of Cuba who was classified as an unaccompanied alien child ("UAC") at the time of his entry into the United States in November 2025. He has since been in the custody of the United States Department of Health and Human Services ("HHS"). Dkt. 1 ("Pet.") at 3; *see also* Pet. at ¶10. His sponsor, [redacted] is a lawful permanent resident who claims she is K.A.P.L.'s mother. Pet. at ¶ 55; *see also* Declaration of Assistant Deputy Director Toby Biswas ("Biswas Decl.") at ¶ 29. On November 20, 2025, she provided HHS's Office of Refugee Resettlement ("ORR") with her permanent residency card and was granted weekly visits with the petitioner. Pet. at ¶ 60. On December 9, 2025, she filled out a Family Reunification Application, which remains pending. Pet. at ¶¶ 62, 63. As of March 10, 2026, she has been fingerprinted, has completed a home study, and ORR has received a report recommending placement with the sponsor. *See* Biswas Decl. ¶30.

Petitioner filed this action on March 5, 2026. *See* Dkt. 1. He generally alleges that ORR's identification requirements are unlawful in several ways and seeks immediate release from ORR custody. *See* Pet. at 15, ¶ 78–100 (Claims for Relief). He thus brings six causes of action: (1) a due process claim arguing that respondents' refusal to release him deprives him of freedom from confinement and his right to family integrity, *id.* at ¶¶ 76–80; (2) a claim arguing that the government's new identification policy violates the Trafficking Victims Protection Reauthorization Act ("TVPRA") by keeping him in custody for a longer period of time, *Id.* at § 81–83; (3) a claim that his prolonged custody violates the APA, *id.* at ¶¶ 81–83; (4) a claim that prolonged custody violates a regulatory "best interest" of the child standard, *id.* at ¶¶ 89–93; and that a writ of Habeas Corpus and Mandamus are necessary remedies, *id.* at ¶¶ 94–102. This court ordered respondents to file their return by February 13, 2026. Dkt. 8.

But K.A.P.L.'s petition should be denied here because ORR is complying with applicable statutes and regulations, which make it responsible for the care and custody ofUACs, which includes making placement determinations for all who are in federal custody by reason of their age and immigration status. ORR is acting consistently with the law by requiring the sponsor to undertake a sponsorship application, subject to ORR approval, before releasing K.A.P.L. And because statutes require such vetting of sponsorship applications, the habeas petition here should be denied.

I. Statutory and Regulatory History

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

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

B. The Trafficking Victims Protection Reauthorization Act of 2008

Congress enacted the TVPRA in 2008 to strengthen protections for UACs and support their safe repatriation or appropriate placement within the United States. The statute, consistent with

the HSA, makes HHS responsible for the care and custody of UACs. 8 U.S.C. § 1232(b)(1). It also requires the HHS Secretary to decide that a sponsor "is capable of providing for the child's physical and mental well-being." 8 U.S.C. § 1232(c)(3)(A). This safety and suitability determination must "at a minimum, include verification of the custodian's identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child." *Id.* The TVPRA also requires ORR to prioritize the safety and well-being of UACs while in its care and upon release. One of the methods of doing so as contemplated by the statute is to coordinate with the United States Department of Homeland Security ("DHS") for available vetting information—including from immigration databases: "Not later than 2 weeks after receiving a request from the Secretary of Health and Human Services, the Secretary of Homeland Security shall provide information necessary to conduct suitability assessments from appropriate Federal, State, and local law enforcement and immigration databases." 8 U.S.C. § 1232(c)(3)(C). These responsibilities are carried out through cooperative agreements and contracts with care providers under ORR policies and oversight. *See* 8 U.S.C. § 1232(i); 31 U.S.C. § 6305.

C. The Foundational Rule

In April 2024, ORR promulgated the *Unaccompanied Children Program Foundational Rule* (hereinafter, "Foundational Rule"), codified at 45 C.F.R. part 410, to establish comprehensive regulations governing its UAC program. The Foundational Rule also implements provisions of the *Flores* Settlement Agreement ("FSA") relevant to ORR's care and custody of UAC and conditionally and partially terminated the FSA as to ORR in June 2024.[1] *Cf. Reno v. Flores*, 507

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

U.S. 292 (1993) (upholding INS regulations about the release of UACs to properly vetted sponsors). Effective July 1, 2024, the Foundational Rule formalized previously informal procedures, including those related to ORR's release policies and practices.

The Foundational Rule provides that ORR identifies a standard program placement for the UAC upon notification from any federal department or agency that a child in its custody is a UAC and therefore must be transferred to ORR custody. 45 C.F.R. § 410.1101(b). ORR then works with the referring federal government department or agency to accept transfer of custody of the UAC, consistent with the statutory requirements at 8 U.S.C. § 1232(b)(3) and 45 C.F.R. § 410.1101(c). ORR places each UAC in the least restrictive setting that is in the best interest of the child and appropriate to the unaccompanied child's age and individualized needs. 45 C.F.R. § 410.1103(a). ORR may place a child in a shelter facility, foster home or group home (which may be therapeutic), heightened supervision facility or secure facility (including residential treatment centers), or other care facility that can provide for their specific individualized needs, including an out-of-network ("OON") placement (which may be restrictive or non-restrictive). 45 C.F.R. § 410.1102; *see also ORR Unaccompanied Alien Children Bureau Policy Guide* ("UAC Policy Guide") § 1.2, https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide (last accessed Mar. 12, 2026). ORR also considers several factors relevant to the UAC's placement, including but not limited to: danger to self; danger to the community/others; runaway risk; trafficking in person or other safety concerns; age; and gender. 45 C.F.R. § 410.1103(b).

ORR is required to make and record the prompt and continuous efforts on its part towards release of children in its custody to appropriately vetted sponsors. *See* 45 C.F.R. § 410.1203(a). All individuals seeking to sponsor a child in ORR custody (notably, even a UAC's parent or legal guardian) must undergo the sponsor assessment process, consistent with ORR's statutory

responsibilities. *See* 8 U.S.C. § 1232(c)(3)(A) ("an unaccompanied alien child may not be placed with a person or entity unless the Secretary of Health and Human Services makes a determination that the proposed custodian is capable of providing for the child's physical and mental well-being"); 45 C.F.R. § 410.1201(a), 1202(b). This understanding was further reinforced in the recently enacted One Big Beautiful Bill Act of 2025, Pub. L. No. 119-21, title VIII, subtitle H, section 87001(c)(1) (2025) ("OBBBA") (defining "potential sponsor" as "an individual or entity who applies for the custody of an unaccompanied alien child").

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

D. Human Trafficking and UAC Sponsorship Fraud

In December 2022, the U.S. Senate's Committee on Homeland Security and Governmental Affairs published a report detailing the inadequate treatment of UACs in federal care and the insufficient safeguards to ensure they are not trafficked or abused following their release. *See* United States Senate Committee on Homeland Security and Governmental Affairs, Minority Staff Report, *Federal Care of Unaccompanied Children: Minors Remain Vulnerable to Trafficking and*

Abuse ("Minority Report"), https://www.govinfo.gov/content/pkg/GOVPUB-Y4_G74_9-PURL-gpo190271/pdf/GOVPUB-Y4_G74_9-PURL-gpo190271.pdf (last accessed Mar. 13, 2026). A congressional subcommittee launched its investigation in 2015, following reports that ORR placed eight children with members of a human trafficking ring that forced the children to work on an egg farm for 12 hours a day, six or seven days a week. *See id.* at 26.

In the December 2022 report, it was noted that despite the increased number of UACs entering the United States in 2021 and 2022, ORR's completion of background checks significantly declined from FY 2019. *See id.* at 35–37. Moreover, the report identified the lack of adequate background checks for potential sponsors and the waiver of background check requirements on household members, even when releasing a child to their parent, as areas where additional safeguard measures were necessary. *See id.* at 37–45. It was therefore recommended that ORR update the UAC Policy Guide to indicate that if a potential sponsor or household member refuses to comply with required background checks, ORR should prohibit further consideration of the release of a child into their custody until such a check could be completed. *See id.* at v.

In March 2023, after a Florida grand jury published a report outlining over 100 allegations concerning deficiencies in ORR's UAC Program, ORR established an Integrity & Accountability ("I&A") Team to detect, prevent, mitigate, and report fraud and exploitation perpetrated by sponsors, parents, and UAC. *See* Office of Refugee Resettlement, Administration for Children and Families, *Recommendations to Combat Trafficking and Fraud in the UAC Program* ("ORR Recommendations") at 1–3 (Feb. 4, 2025), https://www.scribd.com/document/830798358/HHS-ORR-Report (last accessed Mar. 13, 2026). The I&A Team identified several instances of fraudulent sponsorship applications, document falsifications, and patterns of human trafficking and exploitation. *See id.* at 3–8. For example, the I&A Team identified instances of children and

sponsors using altered birth certificates or unaltered birth certificates belonging to another person. *See id.* at 7. The I&A Team also found that such fraud often involved collusion with others, including a family member in the child's country of origin. *See id.* In one instance, the I&A Team identified 10 UACs who were released to sponsors who committed intentional document fraud in October 2024. *See id.*

The I&A Team also found cases of fraud, abuse, and extortion by prospective sponsors. For example, the I&A Team reported that in late February 2024, an individual sponsor using multiple identities and addresses to sponsor or attempt to sponsor multiple children in Cleveland, Ohio was discovered after an investigation of potential child abuse and trafficking. *See id.* at 7–8. The individual successfully sponsored a 15-year-old female UAC whose allegations of sexual abuse and trafficking led to charges of rape against the sponsor. *See id.* at 7. In another case, the I&A Team found that a woman and her partner attempted to sponsor a total of 15 UAC over a five-year period by using multiple aliases, with the aliases only discovered when the sponsor underwent fingerprinting. *See id.* The I&A Team also found cases of individuals demanding payment to sponsor a UAC. *See id.* at 8. In one scheme, there were 17 reported instances of successful extortion totaling $27,694. *See id.* Despite this background, ORR's data revealed that less than 1% of sponsorship applications had been denied in recent years. *See id.*

E. ORR Release Policies and Practices

To carry out its statutory mandates under the HSA and TVPRA, and consistent with the Foundational Rule, ORR developed policies and procedures for identifying, and conducting suitability assessments of, potential sponsors. These procedures are generally set out in ORR's publicly available UAC Policy Guide (mentioned above). A full assessment of a potential sponsor's suitability is particularly appropriate because ORR is not a law- or immigration-

enforcement agency and lacks the authority to hold individuals accountable by reassuming care if the sponsor abuses or neglects a child after a UAC has been released from ORR custody. Biswas Decl. at ¶ 9. And ORR only takes children into its custody upon referral by another federal agency, as described in statute. *See* 8 U.S.C. § 1232(b)(3) (requiring, absent exceptional circumstances, that any agency of the federal government transfer the custody of a child to HHS no later than 72 hours after determining that the child is a UAC). In this regard, ORR is also very different from state child welfare agencies, which typically retain such authority post-placement. Biswas Decl. ¶ 9. Accordingly, ORR must "front-load" child-safety considerations in its identity verification and sponsor-vetting practices. *Id.*

In light of ORR's obligation to protect UACs from smugglers, traffickers, and others who may seek to victimize them, "safe and timely release . . . involves several steps, including: the identification of sponsors; sponsor application; interviews; the assessment (evaluation) of sponsor suitability, including verification of the sponsor's identity and relationship to the child (if any), background checks, and in some cases home studies; and post-release planning." UAC Policy Guide § 2.1; Biswas Decl. ¶ 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. UAC Policy Guide § 2.2.1; Biswas Decl. ¶ 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. UAC Policy Guide §§ 2.2.2, 2.4; Biswas Decl. ¶ 12.

A potential sponsor must complete a sponsorship application, provide unexpired government-issued identification documentation for the sponsor and any other adults living in the household or identified in a sponsor care plan, and, along with any adult living in his household, undergo a background check. UAC Policy Guide §§ 2.2.4, 2.5; Biswas Decl. ¶ 11. All potential sponsors must also submit proof of address, income, sponsor-child relationship, and criminal history documents (if applicable). UAC Policy Guide § 2.2.4; Biswas Decl. ¶ 11. Additionally, in certain circumstances a home study, which consists of interviews, a home visit, and a written report containing a case worker's findings, is performed. UAC Policy Guide § 2.4.2; Biswas Decl. ¶ 12.

Once the assessment of the potential sponsor is complete, the care provider makes a release recommendation to ORR. UAC Policy Guide § 2.7; Biswas Decl. ¶ 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. Biswas Decl. ¶ 13. ORR makes the final release decision. UAC Policy Guide § 2.7; Biswas Decl. ¶ 11. Release decisions include: (1) approve release to sponsor; (2) approve release with post-release services; (3) conduct a home study before a final release decision; (4) deny release; or (5) remand for further information. UAC Policy Guide § 2.7; Biswas Decl. ¶ 13. The Policy Guide describes various circumstances under which ORR will or may deny release. Generally, ORR denies release if: (1) the potential sponsor is not willing or able to provide for the child's physical or mental well-being; (2) the potential sponsor is not willing to complete the mandatory fingerprint check; (3) the physical environment of the home presents a risk to the child's safety or well-being; or (4) release of the UAC would present a risk to him or herself, the sponsor, household, or community. UAC

Policy Guide § 2.7.4; Biswas Decl. ¶ 14.

F. OBBBA's Section 87001

Concerned about the past abuses of the sponsorship program discussed above, ORR's release policies regarding background checks were effectively ratified by Congress in July 2025. Specifically, OBBBA's Section 87001 includes the following list of things that ORR "shall" review when determining appropriateness of release:

> (1) background checks on potential sponsors, which shall include—
>
> A. the name of the potential sponsor and of all adult residents of the potential sponsor's household;
>
> B. the social security number or tax payer identification number of the potential sponsor and of all adult residents of the potential sponsor's household;
>
> C. the date of birth of the potential sponsor and of all adult residents of the potential sponsor's household;
>
> D. the validated location of the residence at which the unaccompanied alien child will be placed;
>
> E. an in-person or virtual interview with, and suitability study concerning, the potential sponsor and all adult residents of the potential sponsor's household;
>
> F. contact information for the potential sponsor and for all adult residents of the potential sponsor's household; and
>
> G. the results of all background and criminal records checks for the potential sponsor and for all adult residents of the potential sponsor's household, which shall include, at a minimum, an investigation of the public records sex offender registry, a public records background check, and a national criminal history check based on fingerprints;

OBBA, Public Law 119-21, 139 Stat. 72. Section 87001 (July 4, 2025). These requirements ensure that ORR's obligation to undertake a full assessment of each potential sponsor's suitability is completed before ORR releases the child from its custody.

II. Factual and Procedural History

As discussed above, K.A.P.L.'s sponsor is allegedly his mother. Pet. at ¶ 55. On November 20, 2025, she provided ORR with her permanent residency card and was granted weekly visits with the petitioner. Pet. at ¶ 60. On December 9, 2025, she filled out a Family Reunification Application, which remains pending. Pet. at ¶¶ 62, 63. She has also been fingerprinted, has completed a home study, and ORR received a home study report recommending placement with the sponsor. Biswas Decl. at ¶30.

Legal Standard

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

Argument

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

As a threshold matter, K.A.P.L's APA, TVPRA and Mandamus claims (Counts Two, Three, and Six in the petition) for ORR purportedly violating its own rules are not viable as a matter of law. This is because the Supreme Court has made clear that where a foreign national's claims for relief "'necessarily imply the invalidity' of their confinement," those claims "must be brought in habeas."[2] *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (per curiam); *see also id.* at 674 (Kavanaugh, J., concurring) ("[G]iven 5 U.S.C. § 704, which states that claims under the APA are not available when there is another 'adequate remedy in a court,' . . . habeas corpus, not the APA,

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

is the proper vehicle here."); *Muhammad v. Close*, 540 U.S. 749, 750 (2004) (per curiam) ("Challenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus [.]" (citing *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973))). Here, as in *J.G.G.*, habeas is an "adequate remedy" through which the petitioner can challenge his detention. And even if the petitioner's APA, TVPRA, and Mandamus claims had merit (which they do not), the result would be the same relief as that in habeas: release from detention.

Raspoutny v. Decker, a case involving a habeas petitioner who challenged his detention pursuant to § 1226(a), is instructive. 708 F. Supp. 3d 371 (S.D.N.Y. 2023). In declining to review that petitioner's APA claim, the court held that "petitioner points to no 'statute' that permits 'review[] of the arrest,'" and an arrest is not a "'final agency action for which there is no other adequate remedy in a court'—because the issuance of a writ of habeas corpus under 28 U.S.C. § 2241 would provide an adequate remedy were the Court to find [the petitioner's] custody to be improper." *Id.* at 381 (quoting 5 U.S.C. § 704) (first alteration in original); *see also Lucas v. Fed. Bureau of Prisons*, No. 17 Civ. 1184, 2018 WL 3038496, at *2 (S.D.N.Y. June 19, 2018); *Stern v. Fed. Bureau of Prisons*, 601 F. Supp. 2d 303, 305 (D.D.C. 2009). Petitioner's APA, TVPRA and Mandamus claims should be treated the same here.

II. Administrative Exhaustion Is Appropriate Here.

Turning to another threshold point, the petition here is untimely where it is not disputed that a sponsorship application with ORR remains pending, and has even progressed significantly since the filing of this petition. *See* Dkt. 1 at 8; Decl. Biswas ¶30; *see also Richmond v. Scibana,* 387 F.3d 602, 604 (7th Cir. 2004) (discussing the "common-law exhaustion rule [that] applies to § 2241 actions"); *Baker v. Warden*, No. 23 C 50028, 2025 WL 1398979, at *3 (N.D. Ill. May 14, 2025) (petitioners "must exhaust their federal administrative remedies *before* seeking

habeas relief in court" (emphasis added)). Still, when Congress has not imposed a statutory administrative exhaustion requirement, "sound judicial discretion governs" whether exhaustion should be required. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); *see also Gonzalez v. O'Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004). The exhaustion doctrine both allows agencies to apply their special expertise in interpreting relevant statutes and promotes judicial efficiency. *Id.* But in making such an assessment, courts must balance the individual and institutional interests involved, taking into account "the nature of the claim presented and the characteristics of the particular administrative procedure provided." *McCarthy*, 503 U.S. at 146. The general rule is that parties must exhaust "prescribed administrative remedies before seeking relief from the federal courts." *Id.* at 144–45.

This case falls well within the general rule because it is not clear from any of the documentation petitioner has filed before this court whether the petitioner's wait time is at all unreasonable. In fact, the home study has been completed and there is a recommendation for placement. Decl. Biswas at ¶30. Petitioner attempts to get around this by making purely policy challenges and characterizing vetting procedures as unconstitutional because the wait times are now longer than they were in 2024. Pet. at 12. But that should make perfect sense where there is now a standardization of documentation and practices, which exists to prevent the fraud and human trafficking that occurred in the past. Indeed, it would seem that the vetting practices petitioner disagrees with are many (if not most) of what Congress specifically contemplated *should* occur within OBBBA. *See supra.*

There are "two exceptions to the exhaustion requirement . . . . First, exhaustion will be excused when resort to such procedures would be futile, and second, the exhaustion requirement is excused when a claimant is wrongfully denied meaningful access to administrative procedures."

Lieske v. Morlock, 570 F. Supp. 1426, 1429 (N.D. Ill. 1983). Neither of these exceptions ostensibly apply in this instance because the petition makes no argument regarding futility. Further, there is no allegation whatsoever that ORR is preventing anyone from filling out or sending in a sponsorship application. In fact, the petition acknowledges that an application has been filed and is pending. Pet. at ¶¶ 62–69. Consequently, the court should require exhaustion in this matter so ORR can finish its vetting process. *See Woodford v. Ngo*, 548 U.S. 81, 90–91 (2006) ("Proper exhaustion demands compliance with an agency's deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings.").

As alluded to above, the statutory and regulatory framework contemplate a robust administrative process to allow ORR to vet sponsorship applicants. *See supra* pp. 5–7. Bypassing that process entirely via habeas relief would directly undermine the review-process that the HHS Secretary "*shall, at a minimum*, . . . verif[y] the custodian's identity and relationship to the child, if any, as well as [make] an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child." 8 U.S.C. § 1232(c)(3)(A) (emphasis added). Yet that is precisely what the petitioner wishes to bypass by filing a habeas claim before his sponsor even finishes pursuing her application with ORR. *See* Pet. at 26.

III. ORR's Custody of Petitioner Is Required By Statute.

In addition, it is worth noting that this case is fundamentally different from a typical habeas petition because "juveniles, unlike adults, are always in some form of custody." *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 exercise custody itself or appoint someone else to do so." *Id.*; *see also Schall v. Martin*, 467 U.S. 253, 265

(1984) (noting that a "juvenile's interest in freedom from institutional restraints . . . must be qualified by the recognition that juveniles, unlike adults, are always in some form of custody" because they "are not assumed to have the capacity to take care of themselves").

In this case, the petitioner was brought into ORR custody before he had any parent or recognized legal guardian come forward to take custody over him. *See* Pet. ¶ 55. This means that ORR took custody of K.A.P.L. when he was a UAC under the HSA. And in that circumstance, the TVPRA reinforces and expands upon the government's responsibility for the care of UACs—including the vetting of sponsors. Unlike adults in the custody of other agencies, ORR cannot simply release children in its care on their own recognizance, or to just anyone who is willing to sponsor them. 6 U.S.C. § 279(b)(2)(B). Rather, the TVPRA requires that ORR make a considered decision about each child's placement based upon all the circumstances. 8 U.S.C. § 1321(c). As discussed above, ORR is *prohibited* from releasing the petitioner to his sponsor's custody until it makes "a determination that the proposed custodian is capable of providing for the child's physical and mental well-being." 8 U.S.C. § 1232(c)(3)(A). And those determinations can include the vetting procedures Congress specifically contemplated just last July within OBBBA's Section 87001. Accordingly, ORR is acting in accordance with the statutory requirements regarding the potential release of K.A.P.L., and he should not yet be released.

Petitioner's statutory arguments to the contrary are meritless. First, they argue that any policy that might entail better vetting is "presumptively disqualifying" of the sponsor and would necessarily take more time. Hence, they argue that identity verification of sponsors and home studies are not in the best interests of children. *See* Dkt. 1 at ¶¶ 81–83. That is a policy argument and not a legal one based on the considerations Congress has already expressly contemplated should occur. This is borne out by how it is not in children's best interests to be released to human

traffickers, either. *See id.* at ¶ 82 (relying on a generalized statement that UACs being placed with his mother would presumably be in his "best interest" because it's a "less restrictive setting"). No one doubts that children should be with their parent, but the question in this case is about the appropriate amount of vetting *to determine* parenthood (or, failing that, suitability of custody).

Petitioner then argues that completion of a home study is contrary to the Foundational Rule, *see id.* at ¶ 92, but overlook how that rule explicitly uses discretionary, rather than mandatory, language: "ORR *may* consult with the issuing agency (e.g., consulate or embassy) of the sponsor's identity documentation to verify the validity of the sponsor identity document presented." 45 C.F.R. § 410.1202(b) (emphasis added); *Bouarfa v. Mayorkas*, 604 U.S. 6, 13–14 (2024) (noting how "the word 'may' *clearly* connotes discretion"). Faced with the glaring examples of egregious fraud discussed above, ORR's policy change here to require identification documentation the agency can trust is a rational and necessary choice. Nothing within the TVPRA or Foundational Rule mandates any less.

Third, petitioner's argument that ORR's identification policy violates the TVPRA's command to ensure prompt release to appropriate sponsor simply begs the same question of who is an appropriate sponsor. *Id.* at ¶ 91. And here again, petitioner relies upon a generalization that the petitioner's current stay is unnecessarily prolonged and not "prompt and continuous effort towards the child's release." Pet. at ¶ 91 (citing 45 C.F.R. § 410.1205(b)). This regulatory requirement of what should "ordinarily" occur fails to contemplate situations of inadequately documented applications. In such circumstances, and under 8 U.S.C. § 1232(c)(3)(A), ORR is not required to release UACs to potential sponsors who have not actually shown to the agency that

they are, in fact, proper custodians of each child. [3]

This same problem is why there is no set time-period that the agency must then release a UAC to anyone who comes forward. *Cf. Flores*, 507 U.S. at 303 ("holding that no "child has a constitutional right not to be placed in a decent and humane custodial institution if there is available a responsible person unwilling to become the child's legal guardian but willing to undertake temporary legal custody").

Finally, ORR's continued custody to allow for the vetting process to be finalized is required under the OBBBA. Indeed, ORR's suitability study must include an identification and suitability study of not only the sponsor, but every adult individual in the household. *See* OBBBA § 87001(b)(1)(A)–(E). DNA tests and home studies are especially important here as the sponsor is a native of Cuba (a country that the United States has not diplomatic relationship with) making verifying the sponsor's identity and relationship with the petitioner even more taxing for ORR to accomplish.

IV. ORR's Custody Over the Petitioner is Constitutional.

Petitioner also argues that ORR's current custody of them constitutes a due process and equal protection violation because it involves family unity, can create for so-called indefinite detention because it is unclear how long vetting might take, and lacks adequate procedural safeguards prior to placing UACs into ORR custody. Pet. ¶¶ 74–80. These arguments, however, are contrary to well-established precedent.

Start with procedural due process. A procedural due process analysis typically considers the three factors articulated by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

[3] Sponsors must demonstrate that they are capable of providing for the child's physical and mental well-being, which includes verification of the custodian's identity and relationship to the child.

But under that analysis, the petitioner cannot demonstrate that the process that ORR provides to them is lacking because no one has even finished with the process as contemplated by OBBBA. Biswas Decl. ¶¶ 19–30. Next turn to the argument that family separation is occurring here without adequate procedural safeguards, or that there is indefinite detention because there is no specific finite period of time for which vetting must be finalized. In the only Supreme Court case dealing with UACs, the Court held that children have neither a substantive nor a procedural due process claim regardless of a *Mathews*-balancing analysis. *See Flores*, 507 U.S. at 303–04, 308 (finding no right to an individualized hearing regarding whether a private placement would be in the child's "best interest," no substantive due process right to release, and that the procedural due process arguments were "just the 'substantive due process' arguments recast in 'procedural due process' terms."). In other words, "[i]nstitutional custody (despite the availability of responsible private custodians) is not unconstitutional in itself." *Flores*, 507 U.S. at 303–04. And there is no "indefinite" detention where, as here, ORR is *required* to promptly adjudicate completed sponsor applications. In other words, this is far from the indefinite detention cases petitioner is attempting to borrow from regarding adults who are being detained for potential removal, but those removals may never occur. And making appropriate sponsor determinations is *required* —meaning that ORR may not release UACs to anyone else's custody unless and until ORR determines it may do so safely. *See* 8 U.S.C. § 1232(c)(3).

Similarly, and to the extent petitioner presses an amorphous interest in family unity from cases dealing entirely with a substantive due process interest for U.S.-based families, even parental rights can still yield to a government's interest in investigating situations that may give rise to neglect and abuse, as the law requires ORR to do. *See, e.g.*, 8 U.S.C. § 1232(c)(3)(A). Here, the petitioner's efforts to rely on "an overly generalized family unity right" runs against the caution

that the liberty protected by the Due Process Clause should not be "subtly transformed into the policy preferences of . . . [the] Court." *Reyna v. Hott*, No. 17-cv-1192, 2018 WL 3551558, at *4–5 (E.D. Va. Mar. 20, 2018). In this regard, "family unity" in the context of civil immigration detention "is an interest that . . . does not exist." *Reyna v. Hott*, 921 F.3d 204, 211 (4th Cir. 2019); *see also Aguilar v. ICE*, 510 F.3d 1, 21–23 (1st Cir. 2007) (similar); *M.O.G.R. v. Warden*, No. 25-cv-356, 2025 WL 3460936, at *5 (M.D. Ga. Dec. 2, 2025) (similar).

Finally, respondents wish to note that K.A.P.L.'s custody by ORR is not "indefinite": now that the sponsor has submitted to the DNA test, home study, and a recommendation for placement submitted. Biswas Decl. ¶¶ 27–30.

Conclusion

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

Respectfully submitted,

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