UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

E[redacted]a, By his Next Friend and Father, Luis Edgar Vimos Rivera,

Petitioner,

v.

Lorraine M. Sanchez, Chief Executive Officer, Cayuga Centers, in her official capacity as facility custodian; Angie Salazar, Director, Office of Refugee Settlement, U.S. Department of Health and Human Services, in her official capacity; Robert F. Kennedy, Jr., Secretary, U.S. Department of Health and Human Services, in his official capacity,

Respondents.

26-cv-02258-MKV

DECLARATION OF ASSISTANT DEPUTY DIRECTOR FOR POLICY FOR THE UNACCOMPANIED ALIEN CHILDREN BUREAU TOBY BISWAS

Pursuant to 28 U.S.C. § 1746, I, Toby Biswas, hereby declare under penalty of perjury that the following is true and correct:

1. I am the Assistant Deputy Director for Policy for the Unaccompanied Alien Children Bureau ("UACB"), and manage the Division of Policy Coordination & Intergovernmental Affairs and the Division of Policy Administration & Legal Affairs within the Office of Refugee Resettlement ("ORR"), an entity within the Administration for Children and Families ("ACF"), U.S. Department of Health and Human Services ("HHS").

2. I have held various roles within ORR since joining the agency in November 2009, and I have held my current role since August 2025. My responsibilities encompass the development and implementation of ORR's policies and procedures concerning the care and custody of unaccompanied alien children. In this capacity, I am responsible for ensuring ORR's implementation of and compliance with programmatic policy prerogatives and statutory responsibilities, including those arising under the Homeland Security Act of 2002 ("HSA"), 6 U.S.C. § 279; Trafficking Victims

Protection Reauthorization Act of 2008 ("TVPRA"), 8 U.S.C. § 1232; and ORR's regulations, including the Foundational Rule, 45 C.F.R. part 410.

3. This declaration is based upon my personal knowledge, information acquired in the course of performing my official duties, information contained in the records of ACF and ORR, and information conveyed to me by current agency employees and contractors.

CARE AND PLACEMENT OF UNACCOMPANIED ALIEN CHILDREN IN ORR CUSTODY

4. An unaccompanied alien child ("UAC") means a child who has no lawful immigration status in the United States; has not attained 18 years of age; and with respect to whom there is no parent or legal guardian in the United States or no parent or legal guardian in the United States is available to provide care and physical custody. 6 U.S.C. § 279(g)(2).

5. Pursuant to the TVPRA, "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) (emphasis added). Therefore, ORR only takes children into its custody upon referral by another federal agency.

6. ORR "**shall** accept referrals of unaccompanied children, from any department or agency of the Federal Government at any time of day, every day of the year." 45 C.F.R. § 410.1101(a) (emphasis added).

7. ORR has no ability to refuse a referral when the referring federal agency transfers custody to it of an individual that the other agency has determined to be a UAC. *See generally* 8 U.S.C. § 1232(b).

8. While "ORR may seek clarification about the information provided by the referring agency as needed", the regulation does not provide for ORR to refuse to accept a referral or demand

that the referring agency change the child's designation as a UAC. 45 C.F.R. § 410.1101(a); 8 U.S.C. § 1232(b).

9. After a federal department or agency notifies ORR that a child in its custody is a UAC, ORR identifies a program placement for the child. 45 C.F.R. § 410.1101(b). In order to do so, ORR requests background information from the referring federal agency to assess, among other things, whether the unaccompanied alien child is a danger to self or others, whether there are any known medical and/or mental health issues, or whether other special concerns or needs are known. ORR uses this information to determine an appropriate placement for the child in the least restrictive setting appropriate for the child's needs. 45 C.F.R. § 410.1103(a) and (b); ORR Unaccompanied Alien Children Bureau Policy Guide ("UACB Policy Guide"), available at https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide, § 1.3.1.

10. 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.

POLICIES FOR AN UNACCOMPANIED ALIEN CHILD'S SAFE AND TIMELY RELEASE

11. ORR's goal is to release UACs to suitable sponsors where consistent with its statutory mandate to ensure that placement does not result in danger to UACs, to the community, or risk of flight by any UAC. *See, e.g.*, 6 U.S.C. § 279(b)(1), (b)(2)(A)(ii); 8 U.S.C. § 1232(c)(1), (c)(3)(A).

12. ORR must balance its responsibility to make and record prompt and continuous efforts towards release of UACs, *see* 45 C.F.R. § 410.1203(a), with concurrent duties to ensure the safety of releases.

13. 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).

14. In addition, under its regulations, which implement the prior *Flores* Settlement Agreement ("FSA")[1], ORR assesses all potential sponsors (even when the potential sponsor is a child's parent or legal guardian) before making any release determination, including a review of the potential sponsor's strengths, resources, risk factors, and relationship to the UAC. *See, e.g.*, 45 C.F.R. §§ 410.1201(a); 1202(b) and (c) (implementing Paragraphs 14 and 17 of the FSA, respectively).

15. Further, as part of the sponsor suitability assessment process, "ORR shall evaluate the unaccompanied child's current functioning and strengths in conjunction with any risks or concerns such as: … (2) History of criminal or juvenile justice system involvement (including evaluation of the nature of the involvement, for example, whether the child was adjudicated and represented by counsel, and the type of offense) or gang involvement." 45 C.F.R. § 410.1202(f).

16. The sponsor assessment process is particularly important 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. Instead, ORR only takes children into its custody upon referral by another federal agency, as

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[1] The *Flores* Settlement Agreement is a consent decree entered into by the former Immigration and Naturalization Service governing the apprehension, process, and care and custody of alien minors in its custody. The Department of Homeland Security and Department of Health and Human Services are successor agencies to the former INS with respect to various parts of the FSA. However, the FSA has been mostly terminated as to HHS. *See Flores v. Garland*, No. 85-cv-4544, 2024 WL 3467715, at *9 (C.D. Cal. June 28, 2024) (conditionally and partially terminating the FSA as to the U.S. Department of Health and Human Services, on the basis of ORR's publication of regulations implementing the Agreement). The few remaining paragraphs of the FSA that still apply to HHS do not pertain to ORR release processes (*e.g.*, sponsor vetting processes).

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.

17. The process for the safe and timely release of an unaccompanied alien child from ORR custody 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. *See generally* 45 C.F.R. part 410, subpart C. Also, under ORR sub-regulatory guidance, there are three categories of potential sponsors: (1) Category 1, consisting of parents or legal guardians; (2) Category 2, consisting of siblings, half-siblings, grandparents, or immediate relatives (such as aunts, uncles, and cousins), and other biological relatives and relatives through marriage; (3) Category 3, consisting of other sponsors, such as distant relatives and unrelated adult individuals. Separately, ORR considers children who have no identified potential sponsors as Category 4 cases. *See* UACB Policy Guide, § 2.2.1.

18. A potential sponsor must complete a sponsorship application package to be considered as a sponsor. 45 C.F.R. § 410.1202. The sponsor must 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 background checks. UACB Policy Guide §§ 2.2.4, 2.5. All potential sponsors must also submit proof of address, proof of income, proof of sponsor-child relationship, and criminal history documents (if applicable). *Id.* § 2.2.4. ORR does not disqualify potential sponsors based solely on their immigration status or for law enforcement purposes. *Id.* § 2.6.

19. With respect to the background check process, Title VIII, Section 87001(b)(1) of the One Big Beautiful Bill ("OBB") provides ORR funds for 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; [...]" (emphasis added).

20. ORR 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, risk factors, and relationship to the sponsor. *See* 45 C.F.R. § 410.1202. 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. *See* 45 C.F.R. § 410.1204; UACB Policy Guide § 2.4.2.

21. Further, ORR "requires DNA testing to support proof of relationship between a potential sponsor and an unaccompanied alien child where a sponsor purports to be biologically related to the child." *See* UACB Field Guidance #27 – DNA Testing Expansion, *available at* https://acf.gov/sites/default/files/documents/orr/FG-27_-_DNA_Testing_Expansion.pdf. Refusal to submit a DNA sample "may be grounds for ORR to recategorize the sponsorship as an unrelated Category 3 sponsorship and will require enhanced vetting procedures pursuant to ORR Policy." *Id.*

22. Once the assessment of the potential sponsor is complete, the care provider makes a release recommendation. UACB 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. *Id.* ORR makes the final release decision. *Id.* 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. *Id.*

23. In general, ORR denies release if: (1) the potential sponsor is not willing or able to provide for the child's physical or mental well-being; (2) the potential sponsor is not willing to

complete the mandatory fingerprint check; (3) the physical environment of the home presents a risk to the child's safety or well-being; or (4) release of the UAC would present a risk to him or herself, the sponsor, household, or community. *Id.* § 2.7.4; 45 C.F.R. § 410.1205. Additionally, pursuant to UACB Policy Guide § 2.7.4, ORR may deny release if the potential sponsor or a member of the potential sponsor's household:

- Has been convicted of child abuse or neglect, spousal abuse;
- Has been convicted within the last five (5) years of a felony involving physical assault, battery or drug-related offenses;
- Has been convicted of a misdemeanor for a sex crime;
- Has been convicted of alien smuggling or a crime related to trafficking in persons or other criminal history or pending charges or child welfare adverse findings;
- Has knowingly provided false information, committed perjury or submitted fraudulent documentation during the sponsor assessment process;
- Is under active criminal investigation, for a crime listed above; or,
- Has an adverse child welfare finding.

24. In making such placements, HHS "may consider danger to self, danger to the community, and risk of flight." 8 U.S.C. § 1232(c)(2)(A). If the sole reason for the denial of release is a concern that the UAC is a danger to self or others, ORR shall send the UAC and their counsel (if represented by counsel) a copy of the Notification of Denial and the child may seek an appeal of the denial. 45 C.F.R § 410.1205(f).

25. Separately, the UAC, or their parent, or legal guardian, can request a risk determination hearing before an independent HHS hearing officer. *See* 45 C.F.R. § 410.1903. All UAC in restrictive placements based on a finding of dangerousness shall be afforded a hearing before an independent HHS hearing officer, to determine, through a written decision, whether the UAC would present a risk

of danger to self or to the community if released, unless the UAC indicates in writing that they refuse such hearing. 45 C.F.R. § 410.1903(a). UAC placed in restrictive settings shall receive a written notice of the procedures. *Id.* Additionally, all other UAC in ORR custody may request a hearing to determine, through written decision, whether the UAC would present a risk of danger to self or to the community if released. 45 C.F.R. § 410.1903(b). However, "[d]eterminations made under [45 C.F.R. § 410.1903] will not compel an unaccompanied child's release; nor will determinations made under [45 C.F.R. § 410.1903] compel transfer of an unaccompanied child to a different placement. Regardless of the outcome of a risk determination hearing or appeal, an unaccompanied child may not be released unless ORR identifies a safe and appropriate placement pursuant to [45 C.F.R. §§ 410.1200-1210]; and regardless of the outcome of a risk determination hearing or appeal, an unaccompanied child may only be transferred to another placement by ORR pursuant to requirements set forth at [45 C.F.R. §§ 410.1100-1109 and 45 C.F.R. §§ 410.1600-1601]." 45 C.F.R. § 410.1903(j).

26. Notably, even where a child has a potential sponsor who is a parent or legal guardian, ORR is not required immediately to release the child to such sponsor. As referenced above, ORR has a statutory duty to first make 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).

27. In addition, depending on the circumstances, ORR's sponsor vetting process may help ORR determine whether a child in its care has a parent who is "available" to provide care and custody. *See* 6 U.S.C. § 279(g)(2)(C)(ii) (defining UAC, in relevant part, as a child with respect to whom "no parent or legal guardian in the United States is **available** to provide care and physical custody.") (emphasis added). If ORR, through its sponsor vetting process, discovers information that reasonably calls into question an individual's ability to provide for the child's physical and mental well-being, that would inform its assessment of the individual's "availability."

Case Status

28. My understanding from a review of the record is that E[redacted] ("Petitioner"), an unaccompanied alien child and citizen of Ecuador, was transferred into ORR custody pursuant to 8 U.S.C. § 1232(b) on November 22, 2025, following his apprehension by U.S. Customs and Border Protection ("CBP") near Rio Grand Valley, Texas. CBP determined that he was a UAC. He was placed with Cayuga Centers, in New York, New York, and is part of a family group of six minors.

29. On November 23, 2025, ORR identified Petitioner's uncle as a potential sponsor and attempted to contact him. On November 26, 2025, ORR learned that Petitioner's father was in the United States and living with Petitioner's uncle.

30. On December 3, 2025, ORR contacted Petitioner's uncle.

31. On December 4, 2025, Petitioner's uncle stated that he would no longer be sponsoring Petitioner as Petitioner's father decided to sponsor him. ORR directed Petitioner's uncle to provide the case manager with contact information for the Petitioner's father (the "Sponsor").

32. On January 7, 2026, ORR made two attempts to contact the Sponsor. No response was received and a voicemail was left requesting the Sponsor call back.

33. On February 2, 2026, after no response from the Sponsor was received, ORR contacted the Petitioner's uncle. At this time, Petitioner's uncle again confirmed he would not be the sponsor and that the Sponsor would be available for a call tomorrow.

34. On February 3, 2026, ORR contacted the "Sponsor" and sent him the Sponsor Application.

35. On February 8, 2026, ORR received the Sponsor Application and the Authorization for Release of Information necessary for ORR to start conducting required background checks.

36. On February 11, 2026, ORR scheduled the Sponsor for a fingerprint appointment.

37. On February 13, 2026, ORR received the Sponsor's proof of address.

38. On February 15, 2026, the Sponsor attended a fingerprint appointment.

39. On February 18, 2026, ORR requested a child abuse/neglect (CAN) check.

40. On February 24, 2026, ORR requested the Sponsor's in-person ID verification and DNA testing.

41. On March 4, 2026, ORR received the Sponsor's CAN check result, which came back as "clear."

42. The Sponsor's in-person ID check and DNA testing were scheduled for March 23, 2026.

43. ORR expects to receive the results for the DNA test within 4 business days.

44. Following receipt of the DNA results, ORR will make a final determination as to the suitability of this sponsor within 48 hours.

I hereby declare under the penalty of perjury that the above statements are true and correct to the best of my knowledge.

Executed this 23rd day of March 2026.

TOBY R. BISWAS -S

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Toby Biswas
Assistant Deputy Director for Policy
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