UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

S[redacted], By his Next Friend and Mother, Maria Blanca 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.

No. 26 Civ. 2276 (JPO)

**RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO THE PETITION FOR A WRIT OF HABEAS CORPUS**

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## TABLE OF CONTENTS

PRELIMINARY STATEMENT ..... 1

LEGAL BACKGROUND ..... 1

FACTUAL BACKGROUND ..... 5

ARGUMENT ..... 7

I. ORR'S CUSTODY OF PETITIONER IS LAWFUL ..... 7

II. PETITIONER IS AN UNACCOMPANIED ALIEN CHILD UNDER THE RELEVANT STATUTORY DEFINITION ..... 8

III. THE GOVERNMENT'S ONGOING CARE FOR PETITIONER DOES NOT VIOLATE THE FLORES SETTLEMENT AGREEMENT ..... 9

IV. THE GOVERNMENT'S ONGOING CARE FOR PETITIONER DOES NOT VIOLATE HIS SUBSTANTIVE OR PROCEDURAL DUE PROCESS RIGHTS ..... 10

CONCLUSION ..... 12

## TABLE OF AUTHORITIES

**Cases**

*Cty. of Sacramento v. Lewis*,
523 U.S. 833 (1998) ..... 11

*D.B. v. Cardall*,
826 F.3d 721 (4th Cir. 2016) ..... 8

*D.J.C.V. v. United States*,
605 F. Supp. 3d 571 (S.D.N.Y. 2022) ..... 8

*Flores v. Garland*,
No. 85 Civ. 4544, 2024 WL 3467715 (C.D. Cal. June 28, 2024) ..... 3, 8

*Flores v. Lynch*,
828 F.3d 898 (9th Cir. 2016) ..... 9

*Maldonado v. Lloyd*,
No. 18 Civ. 3089 (JFK), 2018 WL 2089348 (S.D.N.Y. May 4, 2018) ..... 8

*Mathews v. Eldridge*,
424 U.S. 319 (1976) ..... 10

*Reno v. Flores*,
507 U.S. 292 (1993) ..... 6, 7

*Santosky v. Kramer*,
455 U.S. 745 (1982) ..... 10

*Trump v. J.G.G.*,
604 U.S. 670 (2025) ..... 11

*United States v. Salerno*,
481 U.S. 739 (1987) ..... 11

*Zinermon v. Burch*,
494 U.S. 113 (1990) ..... 10

**Statutes**

5 U.S.C. § 704 ..... 11

6 U.S.C. § 279(a) ..... 7

6 U.S.C. § 279(b)(1) ..... 2

6 U.S.C. § 279(b)(2)(B) ..... 7

6 U.S.C. § 279(g)(2) ..... 2, 7

8 U.S.C. § 1232(b)(2) ..... 2

8 U.S.C. § 1232(c)(1) ..... 2

8 U.S.C. § 1232(c)(2)(A) ..... 2

8 U.S.C. § 1232(c)(3)(A) ..... 3, 7, 8

8 U.S.C. § 1232(g) ..... 2

Respondents (the "Government") respectfully submit this memorandum of law in response to the order to show cause dated March 19, 2026, ECF No. 4, and in opposition to the Petition for a writ of habeas corpus, ECF No. 1 (the "Petition" or "Pet."), filed on behalf of petitioner S [redacted] ("Petitioner").

## PRELIMINARY STATEMENT

Petitioner is a child who is in the care of the Office of Refugee Resettlement ("ORR"), an entity within the Administration for Children and Families ("ACF"), a division of the U.S. Department of Health and Human Services ("HHS"). Petitioner was transferred into ORR custody in November 2025 as an unaccompanied minor. In December 2025, Petitioner's mother, Ms. Vimos Rivera, who was already in the United States, applied to be a "sponsor" to take custody of Petitioner. Since that time, ORR has been working towards conducting the sponsorship assessment process, which is required to be completed before ORR can release Petitioner. ORR has already agreed to expedite the processing of DNA testing, which is the last step in ORR's suitability assessment.[1] ORR expects to receive the results of DNA testing later this week and, will promptly make a determination on Ms. Vimos Rivera's application for sponsorship and release the Petitioner to her custody, if appropriate based on the results of the DNA testing.

## LEGAL BACKGROUND

The statutory and regulatory framework governing the federal care and custody of Unaccompanied Alien Children ("UACs"), as well as their release and sponsorship, reflects congressional intent for ORR to "mak[e] placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status" that ensure UACs "are

[1] This family unit consists of six minor individuals. ORR has agreed to expedite the DNA testing process for all six minors and their respective sponsors.

protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity." 6 U.S.C. § 279(b)(1)(C), (b)(2)(A)(ii). That framework balances the mandate that ORR protect UACs from harm with the requirement that ORR "promptly" place UACs "in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A).

The Homeland Security Act of 2002 ("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."[2] 6 U.S.C. § 279(g)(2). Further, it assigns ORR broad authority over the care and custody of UACs 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 protecting them from smugglers, traffickers, and others who might seek to victimize and exploit UACs. 6 U.S.C. § 279(b)(1)(A), (b)(2)(A)(ii). 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* Decl. of Toby Biswas ("Biswas Decl.") ¶ 11; *see also* 6 U.S.C. § 279(b)(1), (b)(2)(A)(ii); 8 U.S.C. § 1232(c)(1), (c)(3)(A).

The Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), which incorporates the HSA definition of a UAC, 8 U.S.C. § 1232(g), and 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

[2] This determination is made at the time of border apprehension by other federal agencies and departments that encounter these children and have initial custody of them. *See generally* 8 U.S.C. § 1232(b)(2), (3).

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). In addition, under its regulations, which implement the Flores Settlement Agreement[3] ("FSA"), ORR assesses all potential sponsors (even when the potential sponsor is a child's parent) before making any release determination, including a review of the potential sponsor's strengths, resources, risk factors, and relationship to the UAC. Biswas Decl. ¶ 14; *see also, e.g.,* 45 C.F.R. §§ 410.1201(a), 1202(b) and (c), 1205.

The process for release of a UAC from ORR custody involves several steps, including: the identification of sponsors; sponsor application; interviews; the assessment of sponsor suitability, including verification of the sponsor's identity and relationship to the child (if any), background checks, in some cases home studies; and post-release planning. Biswas Decl. ¶ 17; *see also* 45 C.F.R. part 410, subpart C. Under ORR sub-regulatory guidance, there are several 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; and (3) Category 3, consisting of other sponsors, such as distant relatives and unrelated adult individuals. *See* Biswas Decl. ¶ 17; ORR UACB Policy Guide ("UACB Policy Guide"), § 2.2.1, *available at* https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide.

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[3] The *Flores* Settlement Agreement is a consent decree entered into by the former Immigration and Naturalization Service ("INS") 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 Civ. 4544, 2024 WL 3467715, at *9 (C.D. Cal. June 28, 2024) (conditionally and partially terminating the FSA as to HHS on the basis of ORR's publication of regulations implementing the Agreement). The few remaining paragraphs of the FSA that still apply to HHS do not pertain to the ORR release processes (*e.g.*, the sponsor vetting processes).

A potential sponsor must complete a sponsorship application package to be considered as a sponsor. Biswas Decl. ¶ 18; 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. Biswas Decl. ¶ 18; UACB Policy Guide §§ 2.2.4, 2.5. Potential sponsors must also submit proof of address, income, sponsor-child relationship, and criminal history documents (if applicable). Biswas Decl. ¶ 18; UACB Policy Guide § 2.2.4. ORR does not disqualify potential sponsors based solely on their immigration status or for law enforcement purposes. Biswas Decl. ¶ 18; UACB Policy Guide § 2.6.

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. Biswas Decl. ¶ 20; 45 C.F.R. § 410.1202. 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* Biswas Decl. ¶ 21. Additionally, in certain circumstances a home study is performed, which consists of interviews, a home visit, and a written report containing the home-study case worker's findings. *Id.* ¶ 20; 45 C.F.R. § 410.1204; UACB Policy Guide § 2.4.2.

Once the assessment of the potential sponsor is complete, the care provider makes a release recommendation. Biswas Decl. ¶ 22; 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. Biswas Decl. ¶ 22. ORR makes the final release decision. *Id.*; UACB 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. Biswas Decl. ¶ 22; UACB Policy Guide § 2.7. 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. UACB Policy Guide § 2.7.4; 45 C.F.R. § 410.1205. Additionally, ORR may deny release if the potential sponsor or a member of their household has been convicted of, or is under active criminal investigation for, certain crimes; has knowingly provided false information, committed perjury, or submitted fraudulent documentation during the sponsor assessment process; or has certain adverse child welfare findings. Biswas Decl. ¶ 23; UACB Policy Guide § 2.7.4.

**FACTUAL BACKGROUND**

Petitioner was transferred into ORR custody on November 22, 2025, as an UAC, after being encountered by U.S Customs and Border Protection near the Rio Grande Valley. Biswas Decl. ¶¶ 28-29. Following an initial intake assessment, Petitioner was placed with Cayuga Centers, in New York, New York, and is part of a family group of six minors. *Id.* ¶ 31. On November 26, 2025, ORR identified Ms. Vimos Rivera, the Petitioner's mother and next friend in this action, as a potential sponsor for Petitioner, made initial contact with her, and sent her the sponsorship application. *Id.* ¶ 32.

ORR received Ms. Vimos Rivera's sponsorship application and authorization for release of information on December 15, 2025. *Id.* ¶ 33. These documents are necessary for ORR to start conducting the background checks required as part of its suitability assessment. *Id.*

On December 22, 2025, ORR received identification documents and authorizations for release of information from the other members of Ms. Vimos Rivera's household. *Id.* ¶ 35.

Background checks were conducted on Ms. Vimos Rivera and her two household members. *Id.* On December 23, 2025, ORR scheduled fingerprint appointments for Ms. Vimos Rivera and her household members for December 27, 2025, which appointments they attended. *Id.* ¶¶ 35-37.

On February 10, 2026, ORR completed a home study as part of its suitability assessment. *Id.* ¶ 40. On February 27, 2026, ORR completed child abuse and neglect checks, which came back as clear. *Id.* ¶ 41.

On March 12, 2026, ORR scheduled Ms. Vimos Rivera for an in-person identity verification and DNA appointment for March 16, 2026. *Id.* ¶ 43. Ms. Vimos Rivera completed the in-person identity verification and DNA appointment on March 16, 2026, and Ms. Vimos Rivera's DNA sample was mailed to a laboratory for testing. *Id.* ¶ 44.

On March 18, 2026, Petitioner's DNA sample was collected and mailed to the laboratory and Ms. Vimos Rivera's DNA sample arrived at the laboratory. *Id.* ¶ 45. ORR expects to receive the results of the DNA testing on March 27, 2026. *Id.* ¶ 47. Once the results of the DNA testing are received, ORR will promptly make a determination on Ms. Vimos Rivera's application for sponsorship and release the Petitioner to her custody, if appropriate based on the results of the DNA testing. *Id.* ¶ 48.

On March 19, 2026, Petitioner, by his mother as next friend, Ms. Vimos Rivera, commenced this action. The Petition principally requests that the Court order Petitioner's "immediate release to his parent" or, in the alternative, order Respondents to provide an individualized custody determination within 72 hours, with the government bearing the burden by clear and convincing evidence. Pet. at 12, Prayer for Relief. On March 19, 2026, the Court ordered Respondents to show cause why the Petitioner should not be granted by March 23, 2026, directed the parties to appear for a telephone conference, and ordered Respondents not to transfer Petitioner

except to a facility within this District, the Eastern District of New York, or the District of New Jersey absent further Court order. ECF No. 4.

## ARGUMENT

## THE PETITION SHOULD BE DENIED

The Petition presents various legal arguments, all of which ultimately amount to an assertion that the ORR sponsor vetting process has been overly prolonged. There is no factual or legal basis for that assertion; ORR has lawful custody over the Petitioner and is working diligently to determine Petitioner's release to a safe environment.

### I. ORR's Custody of Petitioner Is Lawful

At the outset, 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) (quotations omitted). 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.* The Director of ORR is vested by statute with functions under the immigration laws of the United States with respect to the care of UACs, including among other things responsibility for coordinating and implementing the care and placement of UACs who are in Federal custody by reason of their immigration status. *See* 6 U.S.C. § 279(a), (b)(1)(A). Unlike adults in the custody of other agencies, ORR cannot simply release children in its care on their own recognizance. 6 U.S.C. § 279(b)(2)(B). Instead, the TVPRA requires that ORR make a considered decision about each child's placement. In this case, ORR is doing just that, in accordance with its statutorily-mandated process, and Petitioner has not asserted any claim that would justify short-circuiting that process.

## II. Petitioner Is an Unaccompanied Alien Child Under the Relevant Statutory Definition

Petitioner argues that the Government lacks statutory authority to detain him because he no longer meets the definition of a UAC, since a parent in the United States has been identified and is available and ready to take custody of him. *See* Pet. at 5. But while the statutory UAC definition requires that there be "no parent or legal guardian in the United States [that] is available to provide care and physical custody," *see* 6 U.S.C. § 279(g)(2), that is exactly what ORR is still in the process of determining.

Since December 2025, ORR has been actively engaged in the process of assessing whether Petitioner's proposed sponsor is in fact a parent available to provide care and physical custody of Petitioner. Once the agency makes that determination, Petitioner will cease to be a UAC, for purposes of ORR custody, but until that time, he remains one. *See* 8 U.S.C. § 1232(c)(3)(A) (requiring that HHS "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"); *D.B. v. Cardall*, 826 F.3d 721, 734 (4th Cir. 2016) ("[T]he UAC definition does not refer . . . to a parent's availability in a general sense. Rather, it asks whether a parent is 'available *to provide care and physical custody*.'. . . . And a parent who is not 'capable of providing for the child's physical and mental well-being'—as mandated by the suitable custodian requirement of 8 U.S.C. § 1232(c)(3)(A)—is not available to provide what is necessary for the child's health, welfare, maintenance, and protection."); *but see D.J.C.V. v. United States*, 605 F. Supp. 3d 571, 606 (S.D.N.Y. 2022); *Maldonado v. Lloyd*, No. 18 Civ. 3089 (JFK), 2018 WL 2089348, at *5 (S.D.N.Y. May 4, 2018).

## III. The Government's Ongoing Care for Petitioner Does not Violate the Flores Settlement Agreement

Petitioner argues that his continued detention in ORR custody violates the Flores Settlement Agreement, because that agreement requires that a minor be released "without unnecessary delay" to a parent, legal guardian or other qualified sponsor. Pet. ¶ 28. This argument is unavailing for two reasons: *first*, the FSA, has been mostly terminated as to HHS. *See Flores v. Garland*, 2024 WL 3467715, at *9 (conditionally and partially terminating the FSA as to HHS 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 the ORR release processes (e.g., the sponsor vetting processes).

Second, Petitioner has failed to show that the government has violated any provision of the FSA. The FSA provided that "where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others, the INS shall release a minor from its custody without unnecessary delay . . . to A. a parent;" *Flores v. Lynch*, 828 F.3d 898, 903 (9th Cir. 2016).

However, the FSA also provides that:

> A positive suitability assessment may be required to release to any individual or program pursuant to Paragraph 14. A suitability assessment may include such components as an investigation of the living conditions in which the minor would be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. Any such assessment should also take into consideration the wishes and concerns of the minor.

FSA at ¶ 17. Thus, the requirement that ORR must release the petitioner "without delay" must be read with reference to ORR's responsibility for conducting a suitability assessment.[4] Part of that suitability assessment includes verifying the identity of the sponsor, which ORR is currently in the process of doing. Any delay in releasing the petitioner from ORR custody is not "undue" as it has been the result of ORR's ongoing suitability assessment. *See* Biswas Decl. at ¶¶ 28-48 (describing steps that ORR has taken to evaluate sponsor's application).

## IV. The Government's Ongoing Care for Petitioner Does not Violate His Substantive or Procedural Due Process Rights

Petitioner also has not established that the procedures related to his custody and release by ORR are constitutionally inadequate. "In procedural due process claims, the deprivation by state action of a constitutionally protected interest in 'life, liberty, or property' is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without due process of law*." *Zinermon v. Burch*, 494 U.S. 113, 125 (1990). To determine what procedural due process requires in a given situation, the Supreme Court has articulated the following factors to consider:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

*Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

Here, ORR's procedures do not create a risk of erroneous deprivation because they are designed to release the petitioner to his sponsor as soon as ORR can be assured that such release

[4] The FSA language concerning release "without unnecessary delay" is currently codified in ORR regulations at 45 C.F.R. § 410.1200 and 1201(a). But as mentioned above and discussed here, ORR also has a statutory and regulatory duty to appropriately vet potential sponsors for UAC, including potential sponsors who are parents or legal guardians.

is safe and in the best interests of the petitioner. By requesting immediate release, Petitioner seeks to short-circuit ORR's process for assessing issues of safety and the child's best interest.

ORR is actively reviewing the sponsor's application and has proceeded to the final step in the process: confirming the sponsor's identity through DNA testing. ORR has already gathering other necessary information, including household member information, etc.

The Government has a strong interest in protecting the welfare of UACs, as clearly expressed through the provisions of the TVPRA. *See Santosky v. Kramer*, 455 U.S. 745, 766 (1982) ("[T]he State has an urgent interest in the welfare of the child . . . .") (citation and internal quotation marks omitted). ORR's procedures under TVPRA are established to ensure that before any UAC is released from Government custody, the custodian and members of the household to whom the UAC is released are evaluated and determined to be safe and suitable for the UAC. Thus, these procedures serves an important government interest that cannot be set aside without creating a risk to the safety of UACs. For all of the above reasons, ORR's procedures seeking to release the Petitioner to a safe and suitable custodian comport with, rather than violate, due process.

Similarly, Petitioner's substantive due process claim lacks merit. It is difficult to overstate the extremely narrow nature of substantive due process analysis under Supreme Court jurisprudence, or the significant burden that Petitioner must carry to demonstrate that ORR's policies run afoul of the same. As the Supreme Court has repeatedly explained, substantive due process only "prevents the government from engaging in conduct that shocks the conscience . . . or interferes with rights implicit in the concept of ordered liberty." *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 847 (1998) (quoting *United States v. Salerno*, 481 U.S. 739, 746 (1987)). In cases challenging executive action, the threshold question is whether the challenged conduct was "so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *Lewis*,

523 U.S. at 847 n.8. The facts here do not even approach this standard; indeed, ORR is engaged in a release process that is meant to protect Petitioner's well-being, not harm it.[5]

***

In short, ORR has been working diligently to complete the sponsorship assessment process for Petitioner's sponsor. ORR expects to receive the DNA results by March 27, 2026, and will make a final determination as to the suitability of this sponsor within 48 hours thereof. The Court should allow that process, which is designed to protect the Petitioner, to be completed.

**CONCLUSION**

For the foregoing reasons, the Court should deny the petition for a writ of habeas corpus.

Dated: New York, New York
March 23, 2026

Respectfully submitted,

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[5] To the extent the Petition can also be read to assert a claim under the Administrative Procedure Act, *see* Pet. ¶¶ 32-35, such a claim fails. The APA permits judicial review of agency action only when, *inter alia*, "there is no other adequate remedy in a court." 5 U.S.C. § 704. Where an alien's claims for relief "'necessarily imply the invalidity' of their confinement," those claims "must be brought in habeas" and not as APA claims. *See Trump v. J.G.G.*, 604 U.S. 670, 672 (2025).

**Certificate of Compliance**

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules and the Court's Individual Practices. As measured by the word processing system used to prepare it, this memorandum contains 3,807 words.