IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

S.D.C.G.C. and M.J.G.C., minors, by and through their next friend, [redacted]	§	
Petitioners,	§	
v.	§	CIVIL ACTION NO. 4:26-cv-3981
MAYRA LOPEZ, Senior Program Director, LSSS Upbring Krause Children's Shelter, *et al.*,	§	
Respondents.	§	

MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

The Government files this response to the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (Dkt. 1) and moves for summary judgment pursuant to Federal Rule of Civil Procedure 56. As explained below, Petitioners' claims for habeas relief should be denied because they are lawfully in the custody of the U.S. Office of Refugee Resettlement (ORR). For the reasons discussed below, any claim for emergency injunctive relief should also be denied.

I. RELEVANT BACKGROUND

According to Petitioners, they are two siblings who arrived in the United States from their home in Honduras on April 26, 2025, and were immediately detained by the Department of Homeland Security ("DHS"). Dkt. 1. According to Petitioners, DHS designated them as unaccompanied children, transferred them to the custody of the Department of Health and Human Services' Office of Refugee Resettlement ("ORR"), where they remain. Id. According to Petitioners, Ms. [redacted] ("Sponsor") is their aunt, and she is trying to reunify with them and serve as their sponsor. Id.

On October 31, 2025, the sponsor confirmed she was aware that an in-person ID verification was still pending, and an email was sent to the ID verification team. Ex. 1. On November 5, 2025, records confirmed that the sponsor's prior "No Show" designation for an October 8, 2025, appointment resulted from a miscommunication. Id. On December 17, 2025, the sponsor stated she would begin obtaining an Individual Taxpayer Identification Number (ITIN) and would inform the Adult Caregiver (ACG). Id. On January 5, 2026, the sponsor reported that she and the Adult Caregiver ("ACG"), Mevis, began the ITIN process on December 20, 2025, and were told it would take about four weeks. Id. She also stated she mailed her passport as part of the application process. Id. Background checks for the sponsor and ACG were uploaded on January 14, 2026, and a Department of Vetting Summary was received on January 16, 2026. Id.

Between February and May 2026, the sponsor repeatedly reported delays in receiving the ITINs and her passport. Id. On February 6 and March 4, 2026, she stated that neither she nor the ACG had received their ITINs. Id. On March 18, 2026, she reported that her passport had still not been returned, preventing updated fingerprint appointments from being scheduled after the prior fingerprints expired. Id.

On April 7, 2026, the sponsor reported that the IRS advised her ITIN processing was delayed due to tax season. Id. On April 8, 2026, an attempt to schedule fingerprint appointments through the ORR Digital Fingerprint site was unsuccessful because the site was closed. Id. On April 16, 2026, ORR learned that the sponsor had been arrested by HSI Dallas Special Agents on April 13, 2026. Id.

After assignment to the case on April 29, 2026, an addendum to the child's Final SSD was submitted on April 30, 2026. Id. On May 6, 2026, two calls to the sponsor went unanswered. Id. On May 8, 2026, ORR learned that the sponsor had been released from ICE detention on May 7,

2026, and instructions were given to continue working with the sponsor on all pending requirements. Id. The sponsor also stated that neither she nor the ACG had received their ITIN issuance letters due to IRS tax season delays. Id.

On May 13, 2026, the sponsor completed fingerprinting, and the ACG's fingerprint appointment was scheduled for the same day. Id. The prior fingerprints for both individuals expired on March 18, 2026. Id. The sponsor's fingerprint results only reflected her immigration detention on April 13, 2026. Id.

On May 18, 2026, ORR learned that the ACG missed a fingerprint appointment, which was being rescheduled. Id. At that time, the IRS ITIN issuance letters still had not been received. Id. On May 20, 2026, the ACG successfully completed fingerprinting with clear results. Id. The sponsor stated she would search through her paperwork for copies of the W-7 forms. Id. On May 21, 2026, the sponsor reported that copies of the W-7 forms had not been provided and that the tax agency instructed her to pick them up in person. Id. She stated she planned to retrieve and submit them after work that day. Id.

As of May 26, 2026, ORR has not received proof insurance for the Sponsor of ACG's ITIN's. Id. Once ORR receives this information, it will promptly make its final release decision for the children. Id.

II. STANDARD OF REVIEW

Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil Procedure only if the pleadings, along with evidence, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); see also Fed. R. Civ. P. 56(c). Once a motion has been made, the nonmoving party may not rest upon mere allegations or denials in the pleadings but must

present affirmative evidence, setting forth specific facts, to show the existence of a genuine issue for trial. Celotex Corp., 477 U.S. at 322-23. If the moving party meets its burden, the non-moving party must show a genuine issue of material fact exists. Id. at 322. Furthermore, "'only reasonable inferences can be drawn from the evidence in favor of the nonmoving party.'" Eastman Kodak Co. v. Image Tech. Servs., Inc., 504 U.S. 451, 469 n.14 (1992) (emphasis in original) (quoting H.L. Hayden Co. of N.Y., Inc. v. Siemens Med. Sys., Inc., 879 F.2d 1005, 1012 (2d Cir. 1989)).

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

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). Id. 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. Id.

The Trafficking Victims Protection Reauthorization Act of 2008 ("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).

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

[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

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).

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).

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 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.

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

---

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).

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.

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.

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).

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.

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.

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.

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.

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).

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).

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).

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."

IV. ARGUMENT

ORR has lawful custody of Petitioners under its authorities. The arguments in the petition for habeas corpus challenging Petitioners' custody misconstrue the facts and the applicable laws. ORR is working with a potential sponsor to ensure that Petitioners are released to a safe environment. The Court should deny the habeas petition to avoid frustrating the regulatory process, which is intended to ensure the safety of UACs, like Petitioners. ORR has lawful custody of Petitioners.

ORR has its own statutory and regulatory authorities that are distinct from DHS's immigration responsibilities. *See R.R. v. Orozco*, No. CV 20-564 KG/GBW, 2020 WL 3542333, at *3 (D.N.M. June 30, 2020) (noting that "[m]ost immigration enforcement functions are carried out by the [DHS] and its sub-agency, ICE . . . Congress established a different legal framework, however, for the care and custody of UACs"). The ORR UAC program operates under its own statutory authorities—namely the HSA, 6 U.S.C. 279, and Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), 8 U.S.C. 1232. The HSA, 6 U.S.C. 279(g)(2), defines a UAC as a child who has no lawful immigration status in the United States; has not attained 18 years of age; and 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). ORR has specific responsibilities towards UACs who are in federal custody by reason of their immigration status (including providing care and making "placement" decisions, which includes release decisions. See generally 6 U.S.C. 279(b)(1).

Per the TVPRA, ORR can only take custody of children if their custody is transferred to ORR by another federal department or agency, which has identified them as "unaccompanied alien children." *See* 8 U.S.C. 1232(b). Consistent with the HSA, the TVPRA establishes further ORR responsibilities. Among these is the responsibility to protect UACs from harm—including by not

releasing UACs to custodians "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." 8 U.S.C. 1232(c)(3)(A). ORR accomplishes this process through a sponsor suitability assessment process. *See generally* 45 C.F.R. part 410, subpart C.

Thus, here, Petitioners were properly taken into ORR custody when DHS identified them as UAC's and placed the with ORR. Ex. 1. Once placed in ORR custody, ORR has the responsibility to protect the minor children, which includes not releasing them to a sponsor until ORR determines that the proposed sponsor is capable of providing for the childrens' care and safety. That is exactly what ORR is in the process of doing. Id. ORR is working with a potential sponsor to comply with the process to ensure the sponsor is capable of caring for Petitioners. Id. None of the arguments set forth in the petition warrant frustrating that process. The Flores Settlement does not mandate a different result or process.

The Petition cites to the *Flores* Settlement Agreement, Dkt. 1, but fails to acknowledge that the agreement was partially and conditionally terminated as to ORR last June, based on ORR publishing regulations (at 45 CFR part 410) that implement the terms of the agreement that apply to ORR. (The FSA remains applicable in full to DHS). *See Flores v. Garland*, No. CV 85-4544-DMG (AGRX), 2024 WL 3467715, at *9 (C.D. Cal. June 28, 2024) ("The Court conditionally and partially TERMINATES the *Flores* Settlement Agreement as to the U.S. Department of Health and Human Services, except Paragraphs 28A, 32, and 33 of the FSA, and those FSA provisions governing secure, heightened supervision, and out-of-network facilities, as described..."). The remaining provisions of the *Flores* Settlement Agreement that are still applicable to HHS have nothing to do with releasing UACs. The release of UACs, like Petitioners, from ORR custody is governed by 45 CFR part 410, subpart C, not the *Flores* Settlement Agreement. Thus, nothing in

the *Flores* Settlement Agreement warrants the granting of the instant habeas petition.

The Zadvydas framework is also inapplicable.

The *Zadvydas* framework for reviewing the length of detention for removable aliens does not apply here. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). As the Court is aware, *Zadvydas* establishes a presumptively constitutional six-month period of detention. Id. The Government may detain an alien for longer than six months, but it must show that the alien's removal is likely to occur in the reasonably foreseeable future. Id. Petitioners incorrectly directs the Court to *Zadvydas* as a basis for granting the habeas petition. Dkt. 1. *Zadvydas* does not apply here because UACs have a separate, distinct legal framework governing their detention and care. Moreover, even assuming for the sake of argument that *Zadvydas* did apply, ORR is actively working to process a potential sponsor. To the extent that there has been any delay in that process, it has not been caused by ORR. Petitioners' custody in no way violates the principles of *Zadvydas*. The Court should therefore deny the habeas petition and allow the ORR process, which emphasizes the best interests and safety of the UACs, to be completed.

V. CONCLUSION

For the foregoing reasons, the Petition for Writ of Habeas Corpus should be denied.

Respectfully submitted,

JOHN G.E. MARCK
Acting United States Attorney

By: */s/ Elizabeth F. Karpati*
ELIZABETH F. KARPATI
Assistant United States Attorney
State Bar No. 00794069
SDTX: 20567
1000 Louisiana, Suite 2300
Houston TX 77002

(713) 567-9767 (PHONE)
(713) 718-3303 (FAX)
Email: Elizabeth.Karpati@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Instrument was sent via ECF on May 26, 2026, to all counsel of record.

/s/Elizabeth F. Karpati
ELIZABETH F. KARPATI
Assistant United States Attorney