UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

L. G. B. M., a minor, and M. M. B. M., a minor, Petitioners, v. ANGIE SALAZAR Acting Director of the Office of Refugee Resettlement (ORR), *et al.*, Respondents.	)	Cause No. 1:26-cv-01227-JPH-KMB

MEMORANDUM IN OPPOSITION TO
PETITION FOR A WRIT OF HABEAS CORPUS

This is a habeas case in which Petitioners L.G.B.M. and M.M.B.M. (17-year-old and 5-year old citizens of Mexico, respectively) seek immediate release from government custody[1] so that they can be placed with J.H.B.E., who is L.G.B.M.'s father and M.M.B.M.'s grandfather. *See generally* Dkt. 1 ("Pet."). Petitioners' first encounter with the Office of Refugee Resettlement ("ORR"), an office within the United States Department of Health and Human Services ("HHS"), was on January 20, 2026. Ex. 1, Declaration of Toby Biswas at ¶ 29. Two days later, on January 22, 2026, ORR successfully contacted J.H.B.E. *Id.* ¶ 30. But, after speaking to ORR, J.H.B.E. informed ORR that he believes he may not be a good option as a potential sponsor and suggested his wife, C.B., instead. *Id.* Although C.B. initially confirmed she was willing to sponsor L.G.B.M. and M.M.B.M., she failed to respond to ORR's attempts to

[1] L.G.B.M. and M.M.B.M. are currently placed with Bethany Christian Services, a 501(c)(3) nonprofit organization that provides, among other services, short and long-term refugee and immigrant foster care. *See* https://bethany.org/locations/us/indiana/indianapolis (last visited June 22, 2026).

contact her on March 10, 2026. *Id.* ¶¶ 31, 33.

Therefore, on March 12, 2026, ORR contacted J.H.B.E. who stated that he was interested in sponsoring L.G.B.M. and M.M.B.M. again. *Id.* ¶ 34. On or around June 18th, he completed the sponsor applications. *Id.* ¶ 44. ORR is pending proof of income, proof of address, background checks for J.H.B.E. and the alternate caregiver/household member, a home study (required by the Trafficking Victims Protection Reauthorization Act ("TVPRA") for L.G.B.M. given her disability and trafficking victim status), an in-person ID check, and a DNA test. *Id.* Based on disclosures made by the J.H.B.E. and the alternate caregiver/household member, ORR must conduct child abuse and neglect checks as well. *Id.* Additionally, the sponsor and alternate caregiver/household member are working on getting police reports and court records for their disclosed criminal history. *Id.* Finally, once J.H.B.E. provides the remaining supporting documents and background checks, the home study, ID checks and DNA tests have been completed, his sponsorship applications for L.G.B.M. and M.M.B.M. will be considered for a waiver of the identification document and social security or Individual Taxpayer Identification Number ("ITIN") requirements outlined in the ORR Unaccompanied Alien Children Bureau Policy Guide ("UACB") § 2.2.4. *Id.* ¶ 45.

Consequently, this petition should be denied because ORR is complying with applicable statutes and regulations, which make it responsible for the care and custody of unaccompanied alien children ("UAC"), and require it to make 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 sponsors to undergo the sponsorship application process, subject to ORR approval, before releasing L.G.B.M. and M.M.B.M. (collectively "Petitioners"). Because statutes require such vetting, the habeas petition here should be denied.

BACKGROUND

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 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 that they are protected 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).

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.[2] *Cf. Reno v. Flores*, 507 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

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

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 UACB Policy Guide § 1.2, https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide (last accessed June 20, 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) (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 May. 20, 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 UACB 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 May 20, 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 mandate under the HSA and TVPRA, and consistent with the Foundational Rule, ORR has developed policies and procedures for identifying, and conducting suitability assessments of, potential sponsors. These procedures are generally set out in ORR's publicly available UACB 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. Ex. 1 ¶ 14. Rather, 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. Ex. 1 ¶ 14. Accordingly, ORR must front-load child safety considerations in its identity verification and sponsor-vetting policies. *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; Ex. 1 ¶ 17. 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; Ex. 1 ¶ 17. 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; Ex. 1 ¶ 20.

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. UACB Policy Guide §§ 2.2.4, 2.5; Ex. 1 ¶ 18. All potential sponsors must also submit proof of address, income, sponsor-child relationship, and criminal history documents (if applicable). UACB Policy Guide § 2.2.4; Ex. 1 ¶ 18. 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. UACB Policy Guide § 2.4.2; Ex. 1 ¶ 20.

Once the assessment of the potential sponsor is complete, the care provider makes a release recommendation to ORR. UACB Policy Guide § 2.7; Ex. 1 ¶ 22. 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. Ex. 1 ¶ 22. ORR makes the final release decision. UACB Policy Guide § 2.7; Ex. 1 ¶ 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. UACB Policy Guide § 2.7; Ex. 1 ¶ 22. 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; Ex. 1 ¶ 23; *see also*

45 CFR § 410.1205 (Release decisions; denial of release to a sponsor).

F. The One Big Beautiful Bill Act ("OBBA") 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 using appropriated funds:

> (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;

OBBBA, 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.

G. Appeals of ORR Decisions

If ORR denies the application of a parent, legal guardian, or close relative potential sponsor, the denied potential sponsor may appeal that decision through an administrative process. 45 C.F.R. § 410.1206. ORR policy requires that, if ORR denies the sponsor application of a parent, legal guardian, or close relative, the ORR Director, or their neutral and detached designee must send the potential sponsor a Notification of Denial Letter, after receiving all the required information and documentation in a specific case. 45 C.F.R. § 410.1205(c); UACB Policy Guide § 2.7.7. Denied potential sponsors who receive this letter may seek an appeal of ORR's denial decision, with a hearing or without a hearing. *Id.* § 2.7.8.

In deciding an appeal of a release denial, the Departmental Appeal Board's ("DAB's") role (as the Assistant Secretary's neutral and detached designee who was not involved in the denial decision) is not to substitute its judgment for that of ORR, but to determine whether ORR acted within its statutory authority and applied its regulations and policies reasonably, and whether its decision to deny the Petitioner sponsorship of the UAC was supported by substantial evidence. *See* 45 C.F.R. § 410.1206; UACB Policy Guide § 2.7.4.

The burden of proof is on the Petitioner to demonstrate that ORR's decision to deny release was not based on substantial evidence and the standard that the DAB is to apply is a preponderance of the evidence. *See Lucas R v. Becerra*, No. CV 18-5741-DMG (PLAx), 2022 WL 2177454, *28 (C.D. Cal. Mar. 11, 2022) ("The Court will not require the case management team to determine that a sponsor is suitable by a clear and convincing evidentiary standard . . . Due process does not demand that the Court impose procedures that shift the burden to ORR to prove that the sponsor is unfit. Instead, a minor's rights are adequately protected so long as the

minor and sponsor have the opportunity to appeal a denial and submit additional evidence of a sponsor's fitness, if necessary.").

The DAB's decision to affirm or overrule ORR's decision to deny release to a potential sponsor is the final administrative decision of the agency on the application that had been under consideration. UACB Policy Guide § 2.7.8. However, if there is new information or a change in circumstances regarding the reunification application, or regarding the unaccompanied alien child's circumstances, a new reunification application may be submitted that highlights the change(s) and explains why such changes should alter the initial decision. *Id.* Similarly, if ORR discovers new information or becomes aware of a change in the circumstances of the potential sponsor and/or the unaccompanied alien child, ORR may assess the case anew. *Id.*

II. Factual and Procedural History

As briefly discussed above, L.G.B.M. is a citizen of Mexico who was encountered by Border Patrol in Texas on January 20, 2026, and was referred to ORR care on that day. L.G.B.M. was apprehended and referred to ORR with her niece, M.M.B.M., who is also a citizen of Mexico. Ex. 1 ¶ 29. On January 22, 2026, ORR successfully contacted J.H.B.E. who is L.G.B.M.'s father and M.M.B.M.'s grandfather. After speaking to ORR, J.H.B.E. informed ORR that he believes he may not be a good option as a potential sponsor and suggested his wife, C.B., instead. *Id.* ¶ 30. On January 24, 2026, C.B. confirmed that she was willing to sponsor L.G.B.M. and M.M.B.M. *Id.* ¶ 31. On February 3, 2026, ORR was informed that L.G.B.M. had received her Office of Trafficking in Persons eligibility letter. *Id.* ¶ 32. On March 10, 2026, ORR attempted to contact CB but received no response. *Id.* ¶ 33.

On March 12, 2026, ORR contacted J.H.B.E. who stated that he was interested in sponsoring L.G.B.M. and M.M.B.M. again. He informed ORR that he does not have a social security or an individual taxpayer identification number. ORR received from J.H.B.E. his foreign

passport and foreign driver's license, which do not meet the identification requirements outlined in UACB Policy Guide § 2.2.4. *Id.* ¶ 34.

On March 13, 2026, J.H.B.E. completed Parts 1 and 2 of the sponsor application. *Id.* ¶ 35. On April 8, 2026, the Division of Sponsor Administration Federal Field Specialist ("DSA FFS") assigned to the sponsor's application reviewed the application with J.H.B.E. The DSA FFS reviewed the list of required supporting documents. *Id.* ¶ 36. As of April 21, 2026, J.H.B.E.'s sponsor application was still pending completion of various background checks, in-person ID verification, DNA testing, and a home study. *Id.* ¶ 37.

On April 22, 2026, L.G.B.M. and M.M.B.M. were transferred to Bethany Christian Services in Indiana due to the closure of the Michigan facility. *Id.* ¶ 38.

On May 26, 2026, ORR called J.H.B.E. to follow up on the status of his application. At this time, the sponsor application remained incomplete and ORR had not received the Authorization for Release of Information ("ARI") for the sponsor or the alternate caregiver/household member needed to initiate the background check process, proof of address, proof of income, the home study, the in-person ID check, and DNA testing. *Id.* ¶ 39. On June 5, 2026, J.H.B.E. withdrew as sponsor for M.M.B.M. because he lacks the requisite forms of identity documentation for Category 2 sponsors. *Id.* ¶ 40. On June 8, 2026, the DSA FFS contacted the sponsor to schedule the fingerprint-based background check appointment. The sponsor and alternate caregiver/household member were scheduled for June 11, 2026. *Id.* ¶ 41. On June 12, 2026, the sponsor reported that he and his alternate caregiver/household member had missed their fingerprint appointment. The appointment was rescheduled for June 18, 2026. *Id.* ¶ 42.

On June 15, 2026, considering the close family relationship between L.G.B.M. and M.M.B.M., J.H.B.E. was informed that ORR will waive certain requirements for identity documentation ordinarily required for Category 2 sponsors so that he may seek sponsorship of L.G.B.M. and M.M.B.M. together as companion cases. *Id.* ¶ 43. On or around June 18th, he completed the sponsor applications. *Id.* ¶ 44. ORR is pending proof of income, proof of address, background checks for the sponsor and the alternate caregiver/household member, a home study (required by the TVPRA for L.G.B.M. given her disability and trafficking victim status), an in-person ID check, and a DNA test. *Id.* Based on disclosures made by the sponsor and alternate caregiver/household member, ORR is required to conduct child abuse and neglect checks as well. *Id.* Additionally, the sponsor and alternate caregiver/household member are working on getting police reports and court records for their disclosed criminal history. *Id.* Once J.H.B.E. provides the remaining supporting documents and background checks, the home study, ID checks and DNA tests have been completed, his application to sponsor both children will be considered for a waiver of the identification document and social security or ITIN requirements outlined in UACB Policy Guide § 2.2.4. *Id.* ¶ 45.

The Petitioners bring six claims: (1) that Petitioners' custody violates procedural due process, Dkt. 1 at ¶¶ 26-32; (2) that Petitioner's custody is not "in the least restrictive setting" and therefore violates the TVPRA, *Id.* ¶¶ 33-35; (3) that Respondents' failure to release Petitioners is arbitrary, capricious, and not in accordance with the law in violation of the APA, *Id.* ¶¶ 36-41; (4) that Respondents have failed to follow their own regulations in violation of 45 C.F.R. § 410.1000 *et seq.*, *Id.* ¶¶ 42-46; (5) that Petitioners' remedy is properly brought as a writ of habeas corpus, *id.* ¶¶ 47-49; and (6) that the Court may compel Respondents to promptly release Petitioners. *Id.* ¶¶ 50-55.

This court ordered Respondents to file their return by June 22, 2026. Dkt. 6.

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 their detention is unlawful. *See, e.g.*, *Walker v. Johnston*, 312 U.S. 275, 286 (1941).

ARGUMENT

I. Administrative Exhaustion Is Appropriate Here.

Petitioners' habeas action is untimely where, as here, J.B.H.E.'s sponsorship applications are still incomplete. *See, e.g.*, *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"). 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, considering "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 this general rule because J.H.B.E.'s sponsorship applications remain pending and several important vetting

requirements necessary to ensure Petitioners' safety upon release have not yet been completed. *See* Ex. 1.

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 apply. ORR is actively engaging with J.H.B.E. and assisting him with the sponsorship process which remains ongoing. Ex. 1 ¶ 29-45. Further, there is no allegation whatsoever that ORR is preventing J.H.B.E. from completing outstanding sponsorship requirements, in fact, the record shows that specialists met with J.H.B.E. on multiple occasions to help him complete them. *Id. 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.").

The statutory and regulatory framework described above contemplates a robust administrative process to allow ORR to vet sponsorship applicants. *See supra* at 11. 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). There is thus little reason why exhaustion should not be required here.

II. ORR's Custody of Petitioners 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." *Flores*, 507 U.S. at 302. 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 contrast is even more stark, as Respondents entered the United States designated as unaccompanied alien children by DHS. This means that ORR took custody of L.G.B.M. and M.M.B.M. as UACs under the HSA. And in that circumstance, the TVPRA reinforces and expands upon the government's responsibility for the care of UAC. 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. *See* 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. *See* 8 U.S.C. § 1232(c)(2)(A), (c)(3)(A).

As discussed above, the petition should fail because J.H.B.E. has pending applications with ORR to take custody of Petitioners so that ORR can make a considered decision of any kind. *Id.* ¶ 20. Instead of going the direct route contemplated under the statute and regulations, they have attempted to short-circuit that process by going to district court and filing a habeas petition to have the court make its own "best interests" determination. But considering that J.B.H.E.'s applications are currently in the sponsor-assessment process, ORR's actions in this

matter strictly follow the statutory requirements. As discussed above, ORR is *prohibited* from releasing Petitioners to a 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). Accordingly, ORR is acting in accordance with the TVPRA's requirements, and the Petitioners should not be released to J.B.H.E. unless and until ORR deems him suitable.

III. Nothing About ORR's Continued Care for Petitioners Violates the Fifth Amendment.

Petitioners also argue that ORR's custody of them constitutes a procedural due process violation because they have a liberty interest under the Due Process Clause, asserting that Respondents' policies and actions have deprived them of freedom from confinement without constitutionally sufficient due process and that their further detention bears no reasonable relation to a legitimate government purpose. Dkt. 1 at 22-23. These arguments are unavailing, however, because they are contrary to well-established precedent.

A procedural due process analysis typically considers the three factors articulated by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976). That framework requires consideration of the following factors: (1) "the private interest that will be affected by the official action"; (2) "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 (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

The first *Mathews* factor addresses "the private interest that will be affected by the official action." *Id.* at 334. Petitioners identify two constitutional interests: that of L.G.B.M. and M.M.B.M. being free from custody and that of a right to family integrity or familial association between L.G.B.M. and M.M.B.M. and J.B.H.E., their father/grandfather who sought to sponsor them. Dkt. 1 at 29. Neither interest outweighs the remaining *Mathews* factors under the

circumstances of this case where J.B.H.E.'s sponsorship applications were only recently submitted, remain pending, and he has yet to complete several essential vetting requirements, including proof of income, proof of address, background checks for the sponsor and the alternate caregiver/household member, a home study an in-person ID check, and a DNA test. Ex. 1 ¶ 44. Moreover, ORR is actively assisting him in completing them. *Id.* ¶ 45.

As the Supreme Court has recognized, children "unlike adults, are always in some form of custody" and do not have "a right to come and go at will[.]" *Reno v. Flores*, 507 U.S. 292, 302 (1993) (quoting *Schall v. Martin*, 467 U.S. 253, 265 (1984). As such, a UAC's "interest in freedom from institutional restraints" may be subordinated to a state's interest in the child's welfare." *Schall*, 467 U.S. at 265. Additionally, a parent's interest in raising their child is "neither absolute nor unqualified." *Martin v. St. Mary's Dep't of Soc. Servs.*, 346 F.3d 502, 506 (4th Cir. 2003); *see also D.B. v. Cardall*, 826 F.3d 721, 741 (4th Cir. 2016) ("[A]lthough 'the interest of parents in the care, custody, and control of their children' has been recognized as a 'fundamental liberty interest[ ],' *Troxel v. Granville*, 530 U.S. 57, 65 (2000), that right is qualified, and in most cases, "the constitutionality of state actions that interfere with family integrity depends on the adequacy of the procedures available to contest them."). That interest must give way to the state's responsibility to investigate circumstances that could lead to neglect and abuse, as required by the TVPRA for ORR. *See* 8 U.S.C. § 1232(c)(3)(A) (prohibiting ORR from releasing a child to a sponsor unless ORR makes an *affirmative* determination "that the proposed custodian is capable of providing for the child's physical and mental well-being") (emphasis added).

The second *Mathews* factor looks to "the risk of an erroneous deprivation of such interest through the procedures used," as well as whether further or different process would lead to a

more accurate resolution. *Mathews*, 424 U.S. at 335. Notably, in a 2022 decision on cross summary judgment motions in the *Lucas R* litigation, a class action challenging certain ORR policies and practices relating to the care and custody of unaccompanied alien children, including the sufficiency of procedural protections governing children's release to sponsors, the court found that due process does not require ORR to determine that a sponsor who is a parent or close relative is suitable by a clear and convincing evidentiary standard. *Lucas R v. Becerra*, No. CV 18-5741-DMG (PLAx), 2022 WL 2177454, *28 (C.D. Cal. Mar. 11, 2022).

As the *Lucas R* court recognized, "[d]ue process does not demand that the Court impose procedures that shift the burden to ORR to prove that the sponsor is unfit." *Id.* Instead, acknowledging unique interests and challenges in the immigration context and the broad statutory discretion provided to ORR by the TVPRA for conducting the mandated suitability determinations to ensure safe releases of UAC to potential sponsors, the court stated that, "a minor's rights are adequately protected so long as the minor and sponsor have the opportunity to appeal a denial and submit additional evidence of a sponsor's fitness, if necessary." *Id.*; 8 U.S.C. § 1232(c)(3)(A). The court found that ORR's then-existing hearing policies that at the time applied only to UAC with parent or legal guardian sponsors "provide the fundamental hallmarks of due process, including review by a neutral factfinder who is not involved in the original denial." *See Lucas R,* 2022 WL 2177454, at *26.[3] The court only added that the notice must

[3] On August 30, 2022, in alignment with its partial summary judgment decision, the *Lucas R* court issued a preliminary injunction ordering ORR to extend its notice and appeal processes in the ORR Policy Guide which were previously afforded only to denied sponsors who are parents and legal guardians to close relatives, among other changes to its policies regarding release of children to sponsors. *See Lucas R,* 2022 WL 3908829, at *1; *cf. J.E.C.M. by and Through His Next Friend Saravia v. Marcos*, 689 F.Supp.3d 180, 195 (E.D. Va. 2023). ORR incorporated those notice and appeal processes in its Foundational Rule. *See* 45 CFR §§ 410.1205, 1206.

inform denied sponsors that they are entitled to be represented by counsel (at no cost to the Government). *Id.* Notably absent from the *Lucas R* court's reasoning, however, was any mention of a requirement that due process demands a *pre*-determination hearing before a sponsorship decision is ever made. *Id.* Here, J.H.B.E.'s sponsorship applications are still pending, and ORR has not made a final decision whether it is safe to release Petitioners to him. Ex. 1 ¶¶ 44-45.

Petitioners have likewise not made any showing of unreasonable delay. The record demonstrates that ORR has engaged with J.B.H.E. regarding additional required information for sponsoring Petitioners, and other necessary steps. *Id.* ¶¶ 29-45.

Critically, as the court in *JECM* explained, "[t]he potential exploitation of [UAC] by sponsors underscores the strong interest that ORR has in ensuring the safe release of children in its care." 689 F.Supp.3d 180, 199 (E.D. Va. 2023) (discussing evidence of incidents such as the trafficking of UAC by their assigned sponsors in Marion, Ohio and a New York Times investigation that supported legitimate governmental concern regarding mistreatment of UAC where children released by ORR across the country had taken dangerous jobs in factories, which had in some cases been encouraged or even required by sponsors).

In sum, an application of the *Mathews* factors to the specific circumstances of Petitioners' case demonstrates that ORR has not violated their or J.B.H.E.'s procedural due process rights.

IV. Petitioner's Administrative Procedure Act, TVPRA, and *Accardi* Doctrine Claims Fail

Petitioners assert claims under the Administrative Procedure Act ("APA"), Trafficking Victims Protection Reauthorization Act ("TVPRA"), and *Accardi* doctrine. *See* Ex. 1 ¶¶ 33-41. These claims fail for related reasons. Beginning with their APA claim (Third Claim for Relief), Petitioners claim that Respondents have enacted a so-called "policy" preventing their release, and that Respondents' continued detainment of and failure to release them to their

father/grandfather, J.H.B.E., constitutes final agency action which is "arbitrary, capricious, and not in accordance with the law." *Id.* ¶ 39; 5 U.S.C. § 706(2)(A). Section 704 of the APA provides for judicial review of "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court." Here, however, where no statute makes ORR's preliminary sponsor vetting efforts reviewable, J.H.B.E.'s sponsorship applications are being processed, essential vetting requirements such as background and child welfare checks and a mandatory home study are still pending, and ORR has not made its final agency decision regarding J.H.B.E.'s suitability and the safety of releasing L.G.B.M. and M.M.B.M. to him, judicial review of such a claim under the APA is not available. Ex. 1, ¶¶ 36-41.

Further, Section 706(1) of the APA permits a reviewing court to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). [4] The Supreme Court has held that a claim under 5 U.S.C. § 706(1) can only proceed where the plaintiff asserts that an agency failed to take a discrete action that the agency is *required* to take.*Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 64 (2004). Accordingly, an agency's purported delay in acting cannot be unreasonable with respect to action that is not required. *See id.* Here, the TVPRA mandates that ORR release a child only to a sponsor that ORR, in its child welfare experience and judgment, determines will safely care for the UAC. 8 U.S.C. § 1232(c)(3)(A). ORR is actively engaged with J.H.B.E. in the ongoing sponsorship process but has not yet made the determination whether J.H.B.E. is a suitable sponsor to whom L.G.B.M. and M.M.B.M. may safely be released.

[4] While Petitioner does not cite § 706(1), that is the section applicable to claims based on delay.

In their Second Claim for Relief, Petitioners assert that ORR violated the TVPRA's requirement that L.G.B.M. and M.M.B.M., as UAC, be placed in "the least restrictive setting that is in his best interests. *Id.* ¶ 34. The TVPRA does not provide a standalone cause of action because it does not contain an express waiver of the government's sovereign immunity, and the government has not otherwise consented to suit under that statute. *See* 8 U.S.C. § 1232; *Lane v. Pena*, 518 U.S. 187, 192 (1996); *cf. Adams v. Calhoun Cty.*, No. 18-1867, 2019 WL 3501815, at *2 (6th Cir. 2019) (no waiver of state sovereign immunity); *Mjsilovic v. Okla. Ex rel. Bd. of Regents for Univ. of Okla.*, 841 F.3d 1129, 1132–34 (10th Cir. 2016) (same). Accordingly, any claim that ORR has violated the TVPRA must be evaluated under the APA (§ 706(2)(A)) as a claim that the agency action was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *See Lucas R.*, 2018 WL 7200716, at *7 n.12. As explained above, the sponsorship process is in progress, and ORR has not yet made a final agency decision regarding the safety of releasing L.G.B.M. and M.M.B.M. to J.H.B.E. Thus, Petitioner's TVPRA claim fails.

Finally, in Petitioners' Fourth Claim for Relief, they argue for relief under the *Accardi* doctrine based on the Respondents' alleged violation of the Foundational Rule. Ex. 1 ¶¶ 42-46. Petitioners repeat the substance of their TVPRA claim, asserting that Respondents violated their duty to place L.G.B.M. and M.M.B.M. in the least restrictive setting that is in their best interest. *Id.* Petitioner also argues that Respondents failed to timely process J.H.B.E.'s sponsorship applications. *Id.* Neither claim has merit.

Under the *Accardi* doctrine, a court may set aside agency action that is not in compliance with its own regulations or internal procedures. *See Leslie v. Att'y Gen. of U.S.*, 611 F.3d 171, 175 (3d Cir. 2010). But not every agency regulation or procedure falls under the doctrine.

Rather, to state a claim for an *Accardi* violation, Petitioner must plausibly allege that a regulation or procedure "regulate[s] the rights and interests of others" and thus is "controlling upon the agency." *Id.* (citing *Columbia Broad. Sys., Inc. v. United States,* 316 U.S. 407, 422 (1942)); *see United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). When an agency regulation "does not protect fundamental constitutional or statutory rights," a violation of the regulation will only warrant judicial relief when there is "a showing of prejudice." *Leslie*, 611 F.3d at 178 (citing *Chong v. INS,* 264 F.3d 378, 389 (3d Cir. 2001)).

Petitioners fail to identify any regulation or internal procedure that ORR failed to comply with, and as such, fails to plead a viable *Accardi* claim. ORR has followed applicable laws, policies, and regulations in processing H.J.B.E.'s sponsorship applications. These included laws requiring ORR to consider the safety and suitability of any placement. Any *Accardi* claim also fails because the remedy for an *Accardi* violation would be "limited to compelling the agency to abide by" the regulation, which it has done here, not to order release. *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 227 n.44 (D.D.C. 2020). The Court should also deny relief under *Accardi* for Petitioners' claim that ORR failed to timely adjudicate J.H.B.E.'s sponsorship applications. J.H.B.E. just recently submitted applications to sponsor L.G.B.M. and M.M.B.M. and many essential vetting requirements remain pending.[5] Thus, Petitioners' claims under the APA, TVPRA, and *Accardi* doctrine should also be denied.

[5] Notably, 45 C.F.R. § 410.1205(b), cited by Petitioners (Ex. 1 ¶ 45) refers to adjudication of a "completed" sponsorship application. The record reflects that J.B.H.E.'s sponsorship applications are not yet complete, and several important vetting requirements remain pending. *Id.* ¶¶ 29-45.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2026, a copy of the foregoing was filed electronically. Service of this filing will be made on the ECF-registered counsel by operation of the Court's electronic filing system:

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