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

SURREPLY TO PETITIONERS' REPLY TO RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITION FOR A WRIT OF HABEAS CORPUS

Pursuant to the Court's Order at Dkt. 25, the Federal Respondents submit this response to Petitioners' "Reply to Respondents' Memorandum in Opposition to Petition for Writ of Habeas Corpus" filed August 21, 2026 (Dkt. 23),[1] and oppose their request for immediate release from the custody of the Office of Refugee Resettlement ("ORR").

[1] This Court's Order dated July 24, 2026, Dkt. 22, required Petitioners to file a status report which "must certify what steps in the vetting have been completed, what (if any) steps remain outstanding, and when they can be reasonably expected to be completed. The report must also include either a proposed timeline for a subsequent status report, a request for specific action from this Court, or a request to dismiss the petition as moot."

Petitioners' filing, *see generally* Dkt. 23, completely ignored these instructions, and failed to even acknowledge what steps in the vetting process remain outstanding. Those essential vetting requirements that remain were therefore described in ORR's supplemental declaration, which was filed with the Court on August 25, 2025. *See* Sealed Updated Declaration of T. Biswas, Dkt. 24 at ¶¶ 20-21.

Contrary to Petitioners' allegations of unnecessary delay in the sponsor vetting process, *see, e.g.*, Dkt. 23 at 2-3, ORR continues to actively vet J.H.B.E. as a potential sponsor for Petitioner M.M.B.M. (his granddaughter) and Petitioner L.G.B.M. (his daughter), to assess whether it is safe to release them to his custody and care. *See generally* Dkt. 9-1 at ¶¶ 30-45; Dkt. 20 at ¶¶ 6-16; Dkt. 24 at ¶¶ 5-21; *see also* Ex. 1 (Sealed Updated Declaration of T. Biswas) at ¶¶ 5-18. Notably, Petitioners do not so much as acknowledge ORR's legitimate safety concerns regarding the criminal histories of J.H.B.E. and his alternate caregiver ("ACG") as reflected in police reports and court records that have been obtained. *See* Dkt. 9-1 at ¶ 14; Dkt. 20 at ¶ 12; Dkt. 21-5; Dkt. 24 at ¶¶ 6-9. Most critically, reports from ORR's Division of Vetting ("DoV") were returned on August 4 and September 3, 2026, with a finding of "NOT CLEARED/PENDING", indicating that, consistent with ORR policy,[2] further investigation of serious criminal allegations is required in this case. *See* Dkt. 24 at ¶¶ 17, 20; Ex. 1 at ¶¶ 12-13, 18. That important criminal investigation remains pending. *See* Ex. 1 at ¶¶ 13, 18.

Although the Petitioner's potential sponsor is a parent/grandparent, the law requires that L.G.B.M. undergo the sponsorship application process so that ORR may determine whether he is a suitable sponsor for Petitioners because applicable statutes and regulations demand such vetting, and ORR has serious unresolved safety concerns regarding a pending criminal investigation involving J.H.B.E. and his alternate caregiver, *see id.* at ¶¶ 6-11, this habeas petition should be denied.

[2] *See* ORR's Field Guidance 24, available at https://acf.gov/sites/default/files/documents/orr/FG-24_ORR-Division-of-Sponsor-Administration-Role-Guidance.pdf (last accessed September 8, 2026), at page 20.

BACKGROUND

I. Legal Authorities

For more detailed information regarding the pertinent statutory and regulatory history, as well as ORR's applicable policies, see Dkt. 9 at 3-13; Dkt. 9-1 at ¶¶ 4-28. A brief synopsis of the most salient statutes, regulations, and policies follows.

A. ORR's Statutory Authorities

Under the Homeland Security Act ("HSA"), ORR has broad authority over the care and custody of unaccompanied alien children ("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 them. 6 U.S.C. § 279(b)(1)(A) & (b)(2)(A)(ii).

The Trafficking Victims Prevention and Protection Act ("TVPRA"), consistent with the HSA, makes the U.S. Department of Health and Human Services ("HHS") responsible for the care and custody of UACs. 8 U.S.C. § 1232(b)(1). It also requires that before releasing a child from its custody, the HHS Secretary must determine 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.*

B. The Foundational Rule

ORR's Foundational Rule, codified at 45 C.F.R. part 410, establishes comprehensive regulations governing its UAC program. As relevant here, under these regulations, ORR must 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 close relative) must complete the sponsor assessment process, consistent with ORR's statutory responsibilities. *See* 8 U.S.C. § 1232(c)(3)(A); 45 C.F.R. § 410.1201(a), 1202(b).

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. Consistent with the HSA and TVPRA, the Foundational Rule requires that UACs only be released to those sponsors capable of protecting their physical and mental well-being. *See* 45 C.F.R. § 410.1003; *see also* 8 U.S.C. § 1232(c)(3)(A)–(C).

C. ORR Release Policies and Practices

To implement statutory requirements 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 described in ORR's publicly available UACB Policy Guide.[3]

Given 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

[3] ORR's Unaccompanied Alien Children Bureau Policy Guide ("UACB Policy Guide") is available at: https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide (last accessed September 8, 2026). Section 2 details ORR's policies for safe and timely release of UACs from ORR care.

(if any); background checks, and in some cases home studies; and post-release planning." UAC Policy Guide § 2.1; Dkt. 9-1 at ¶ 17. Once the sponsor suitability assessment is complete, ORR makes the final release decision, considering the care provider's release recommendation. UACB Policy Guide § 2.7; Dkt. 9-1 at ¶¶ 11, 22.

Among other reasons, ORR will deny release if the potential sponsor is not able to provide for the child's physical or mental well-being. UACB Policy Guide § 2.7.4; Dkt. 9-1 at ¶ 23; *see also* 45 C.F.R. § 410.1205 (Release decisions; denial of release to a sponsor). If ORR denies the application of a parent, legal guardian, or close relative potential sponsor, the denied potential sponsor is notified that they may appeal that decision through an administrative process. *See* 45 C.F.R. §§ 410.1205(c), .1206; UACB Policy Guide §§ 2.7.7, 2.7.8; Dkt. 9 at 12-13 (discussing the administrative appeals process for denied sponsorship applications).

II. Updated Factual History

As of today's date, ORR is continuing to take active steps to vet J.H.B.E. as a potential sponsor for his granddaughter, M.M.B.M. and his daughter, L.G.B.M.,[4] to assess whether it is safe to release them to him. *See* Ex. 1 at ¶ 5.[5] As discussed below, however, ORR has serious concerns regarding pending criminal allegations against the potential sponsor and his ACG that may warrant denial of J.H.B.E.'s sponsorship of the children. *Id.* at ¶ 6. If ORR denies J.H.B.E.'s sponsor application, as mentioned above, he would be notified of his right to appeal that decision through an administrative process. 45 C.F.R. §§ 410.1205(c), 410.1206; UACB Policy Guide §§

[4] On August 5, 2026, DNA testing results confirmed the biological relationship between J.H.B.E. and his granddaughter, M.M.B.M., and his daughter, L.G.B.M. Dkt. 24 at ¶ 10.

[5] For additional information about the prior case statuses for Petitioners M.M.B.M. and L.G.B.M., see the previous declarations of T. Biswas. *See generally* Dkts. 9-1, 20, 24.

2.7.7, 2.7.8; Ex. 1 at ¶ 6.

Fingerprint results that ORR received on June 18, 2026, indicated derogatory findings for both J.H.B.E. and the ACG. *See* Dkt. 9-1 at ¶ 44. Based on disclosures made by J.H.B.E. and the ACG regarding their criminal histories, ORR is required to conduct child abuse and neglect checks. *Id.* ORR also asked J.H.B.E. and the ACG to obtain police reports and court records concerning their disclosed criminal history. *Id.* On June 29, 2026, ORR mailed detailed instructions explaining how to obtain court records and child welfare documentation after learning the potential sponsor was still unsure of the process. *See* Dkt. 20 at ¶ 10; Dkt. 21-4. On July 13, 2026, ORR received screenshots of court dispositions. *See* Dkt. 20 at ¶ 12; Dkt. 21-5. Based on these limited records, ORR learned that the ACG submitted a plea agreement confirming a felony conviction resulting in house arrest, substance use treatment, and one year of probation. *See* Dkt. 20 at ¶ 12.

On August 5, 2026, the ACG's Texas child abuse and neglect results were received and no records were found. Dkt. 24 at ¶ 7. Texas Central Abuse/Neglect ("TX CAN") registry results were received for both the sponsor and the ACG, with both returning "No Records." *Id.* On August 18, 2026, J.H.B.E. went to the Indiana Department of Children and Families ("IDCF") office and requested his child welfare records since ORR had not yet received the results of the Indiana child abuse and neglect checks from IDCF. *Id.* at ¶ 8. To date, ORR has still not received those records directly from the State of Indiana. Exhibit 1 at ¶ 9.

Further, J.H.B.E. has been unable to provide all the official court records, dispositions, and arrest reports that ORR requested. Ex. 1 at ¶ 10. ORR is currently reviewing the available information to determine whether J.H.B.E.'s criminal history meets the threshold for denial under ORR policy. *Id.* at ¶ 11.

The Division of Vetting ("DoV") packet was requested on July 20, *see* Dkt. 20 at ¶ 14, and was returned on August 4, 2026, with a finding of "NOT CLEARED/PENDING" indicating that further investigation of serious criminal allegations is required in this case. *See* Dkt. 24 at ¶ 17. A new DoV Report was issued on September 3, 2026, which indicated that additional investigation of serious criminal allegations was still needed, as is consistent with ORR's policy.[6] *See* Ex. 1 at ¶ 13.

ORR is currently considering the totality of the information that it has obtained regarding the potential sponsor's suitability, particularly relating to criminal conduct and the DoV Report findings, to make a final suitability determination and release decision in this case. *See id.* at ¶ 18.

ARGUMENT

I. Administrative Exhaustion Remains Appropriate Here.

Noting an absence of a statutory requirement for administrative exhaustion under 28 U.S.C. § 2241, Petitioners assert that ORR has had ample time to complete the sponsor suitability assessment and that this Court should therefore order their immediate release to their sponsor, J.H.B.E., as it has authority to do. *See* Dkt. 23 at 3-4. Respondents do not contest that Congress has not imposed a statutory administrative exhaustion requirement, but importantly, this Court has discretion to determine that, under the present circumstances where an investigation of serious criminal allegations against the potential sponsor J.H.B.E. and his ACG remains pending among other sponsorship requirements, Ex. 1 at ¶¶ 13, 18, administrative

[6] *See* ORR's Field Guidance 24, available at https://acf.gov/sites/default/files/documents/orr/FG-24_ORR-Division-of-Sponsor-Administration-Role-Guidance.pdf (last accessed September 8, 2026), at page 20.

exhaustion is indeed warranted. *See McCarthy v. Madigan*, 503 U.S. 140, 144-46 (1992); *Gonzalez v. O'Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004). Consistent with its statutory responsibility under the TVPRA to ensure safe releases, *see* 8 U.S.C. § 1232(c)(3)(A), ORR should be permitted to complete its suitability assessment of J.H.B.E. As such, habeas relief is inappropriate.

II. ORR's Continued Care for Petitioners is Required by Statute and Does Not Violate the Fifth Amendment.

Petitioners claim that ORR's suitability assessment of the potential sponsor J.H.B.E. has been unnecessarily delayed, and that ORR's custody of them therefore constitutes a procedural due process violation because they have liberty interests under the Due Process Clause in freedom from being detained, as well as in being cared for by family members. *See* Dkt. 23 at 6-7.

Notably, however, Petitioners fail to even mention ORR's concerns that have arisen during the suitability assessment process regarding the criminal histories of J.H.B.E. and his ACG. *Id.*; Dkt. 20 at ¶ 14; Dkt. 24 at ¶¶ 6, 9, 17, 20; Ex. 1 at ¶¶ 7-13, 18. As explained above, an investigation of serious criminal allegations against them is still pending and ORR has not yet made a decision regarding J.H.B.E.'s suitability as a sponsor and whether it is safe to release L.G.B.M. and M.M.B.M. to him.

As Respondents discuss at greater length in their opposition memorandum, *see* Dkt. 9 at 19-22, 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.

Under the circumstances of this case where an active criminal investigation of potential sponsor J.H.B.E. and his ACG remains pending, *see* Ex. 1 at ¶ 18, any constitutional interest that Petitioners L.G.B.M. and M.M.B.M. have in being free from custody and in family integrity or familial association between themselves and J.B.H.E., their father/grandfather who sought to sponsor them, does not outweigh the remaining *Mathews* factors.

Specifically, Petitioners "interest in freedom from institutional restraints" may be subordinated to ORR's interest in their welfare. *Schall v. Martin*, 467 U.S. 253, 265 (1984). Likewise, J.H.B.E.'s interest in raising his child/grandchild 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.").

Here, ORR has a clear statutory responsibility under the TVPRA to make an *affirmative* 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) (emphasis added); *see also* 6 U.S.C. § 279(b)(2)(B) (providing that ORR cannot release children in its care on their own recognizance). ORR has broad discretion to conduct these TVPRA-mandated suitability determinations to ensure safe releases of UACs to potential sponsors, and "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." *Lucas R v. Becerra*, 2022 WL 2177454, *28 (C.D. Cal. Mar. 11, 2022). As noted above, ORR's Foundational Rule and related policies provide notice to potential sponsors that they may appeal a denial of sponsorship in an administrative process. *See* 45 C.F.R. §§ 410.1205(c), 410.1206; *see also* UACB Policy Guide §§ 2.7.7, 2.7.8.

Petitioners have not made any showing of unreasonable delay. The record demonstrates that ORR has continued to engage with J.B.H.E. regarding additional required information for sponsoring Petitioners, and other necessary steps. *See generally* Dkt. 9-1 at ¶¶ 30-45; Dkt. 20 at ¶¶ 6-16; Dkt. 24 at ¶¶ 5-21; Ex. 1 at ¶¶ 5-18. Moreover, the pending investigation of serious criminal allegations concerning the potential sponsor, J.B.H.E., and his ACG, *see* Ex. 1 at ¶¶ 13, 18, is directly relevant to ORR's suitability assessment and determination whether it is safe to release Petitioners to him, and thus should not be circumvented by granting this habeas petition.

Additionally, Petitioners also argue that they "have a fundamental substantive due process right to be with their father/grandfather." Dkt. 23 at 5.[7] And, again without even addressing ORR's concerns regarding the criminal histories of J.H.B.E. and his ACG, they allege that ORR's "unreasonable delay" in completing the potential sponsor's suitability assessment violates this purported right. *Id.* at 4.

"Substantive due process is far narrower in scope than procedural due process" and requires Petitioners to show not only that they were deprived of a constitutionally protected interest, "but also that the action causing the deprivation falls so far beyond the outer limits of legitimate governmental action that no process could cure the deficiency." *J.E.C.M. by and*

[7] Note that while Petitioners' brief mentions a purported substantive due process right to their release to their father/grandfather, the Petition, *see generally* Dkt. 1, does not actually include a substantive due process claim.

Through His Next Friend Saravia v. Lloyd, 352 F.Supp.3d 559, 586 (E.D. Va. 2018) (citing *Plyler v. Moore*, 200 F.3d 365, 374 (4th Cir. 1996) (emphasis, internal quotation marks, and citations omitted in the original) (holding that unaccompanied alien child plaintiffs failed to state a substantive due process claim where they alleged that ORR's policies and procedures made it increasingly difficult for children to be released from ORR's care and custody). Petitioners simply cannot make that requisite showing here. As discussed above, any constitutional liberty interest that Petitioners' father/grandfather has in raising them is "neither absolute nor unqualified, and ORR has countervailing interests in protecting the children from risk of harm upon release, as required by the TVPRA. *JECM*, 352 F.Supp.3d at 587-88 (citing *Martin*, 346 F.3d at 506) (internal quotation marks omitted); 8 U.S.C. § 1232(c)(3)(A).

In sum, Petitioners' continued custody is required by the TVPRA, and they cannot demonstrate that ORR has violated their or J.B.H.E.'s due process rights.

III. Petitioners' Administrative Procedure Act, TVPRA, and *Accardi* Doctrine Claims are Unavailing.

Petitioners repeat their concerns regarding the time that they have spent in ORR's custody while J.H.B.E.'s sponsor suitability assessment is pending and assert claims under the Administrative Procedure Act ("APA"), TVPRA, and *Accardi* doctrine. *See* Dkt. 1 ¶¶ 33-41; Dkt. 23 at 7-8. Once again, they do not discuss ORR's child welfare concerns regarding the criminal history of J.H.B.E. and the alternate caregiver and make no mention of the pending investigation into serious criminal allegations. *See* Dkt. 23 at 7-8.

Regarding their APA claim, Petitioners insist that ORR's continued custody of them while J.H.B.E.'s sponsor application remains pending constitutes a reviewable final action under the APA. Dkt. 23 at 7-8; 5 U.S.C. §§ 704, 706(2)(A). It is not. Where no statute makes ORR's ongoing sponsor vetting efforts reviewable, J.H.B.E.'s sponsorship application is actively being

considered, and an investigation of serious criminal allegations is still proceeding, judicial review of such a claim under the APA is not available. *See* Ex. 1 ¶¶ 13, 18.

Additionally, although 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),[8] the Supreme Court has held that a claim under this provision 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) (emphasis added). As discussed above, the TVPRA requires that ORR only release a child to a sponsor that it deems to be capable of providing for the child's physical and emotional well-being. 8 U.S.C. § 1232(c)(3)(A). Contrary to Petitioners' representations, ORR has been actively engaged with J.H.B.E. in the ongoing sponsorship process but has not yet made the TVPRA-mandated 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. *See generally* Dkt. 9-1 ¶¶ 30-45; Dkt. 20 ¶¶ 6-16; Dkt. 24 ¶¶ 5-21; Exhibit 1 ¶¶ 5-18. Under these circumstances, ORR is not required to release the Petitioners to J.H.B.E. given its safety concerns and the pending investigation of serious criminal allegations. Therefore, this Court should not presuppose the judgment of the agency's child welfare experts and order Petitioners' release to a potentially unfit environment.

Finally, Petitioners argue that ORR has violated the *Accardi* doctrine by failing to comply with its own Foundational Rule requirements for timely processing completed sponsor applications. Dkt. 1 at ¶¶ 42-46; Dkt. 23 at 8. However, 45 C.F.R. § 410.1205(b), cited by Petitioners, *see* Dkt. 23 at 8, refers to adjudication of a "completed" sponsorship application.

[8] Note that while Petitioners do not cite § 706(1) in the Petition, that is the section applicable to claims based on delay. Therefore, the Federal Respondents cited it in their return, *see* Dkt. 9 at 23, and Petitioners discuss it in their reply brief. *See* Dkt. 23 at 7.

The record in this case shows that J.H.B.E.'s sponsorship applications for L.G.B.M. and M.M.B.M. are still incomplete given that the sponsor has not yet provided certain requested criminal history records and most critically, an investigation of serious criminal allegations which raise child welfare concerns remains pending. Ex. 1 at ¶¶ 10, 13, 18. Therefore, ORR has not yet made a decision regarding J.H.B.E.'s suitability and whether it is safe to release L.G.B.M. and M.M.B.M. to him. *Id.* at ¶ 18. Further, 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).

Thus, Petitioners' claims under the APA, TVPRA, and *Accardi* doctrine should be denied.

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 September 9, 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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