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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

Y.D.D.L.C., *a minor, by and through Erica Santamaria as Guardian Ad Litem*,

Petitioner,

v.

ANGIE SALAZAR, ET AL,

Respondents.

Case No. 5:26-cv-3710-JWH-RAO

RESPONDENTS' ANSWER TO VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Honorable John W. Holcomb
United States District Judge

I. INTRODUCTION

The minor Petitioner in this matter, Y.D.D.L.C., is an unaccompanied alien child ("UAC"), as defined at 6 U.S.C. § 279(g)(2), who was referred into the care and custody of the Office of Refugee Resettlement ("ORR") and placed in an ORR care provider facility on September 22, 2025. *See* Declaration of Toby Biswas ("Biswas Decl.") ¶ 29.

As discussed at length in the declaration of Toby Biswas, filed herewith, there is an outstanding issue with the sponsorship application of Y.D.D.L.C.'s current potential sponsor, E.R.M., who is her mother L.D.D.L.C.'s former household member and the paternal aunt of Y.D.D.L.C.'s older brother, that must be addressed. *See* Biswas Decl. ¶ 47, 62. This essential pending sponsor vetting requirement is obtaining updated internet background checks which are meant to ensure that children are only released to sponsors deemed suitable and cannot be dispensed with in the name of immediate family reunification. Upon receipt of the updated background check results, ORR will promptly make its final sponsor suitability determination and release decision. *Id.*

For an unaccompanied alien child, ORR cannot presume that a sponsor applicant, even when a parent or close relative, is able to adequately and properly take care of the child's needs. Here, Y.D.D.L.C.'s potential sponsor is an even more distant relative. Biswas Decl. ¶ 53. ORR must follow the proper processes and investigation to ensure that the child's release to a sponsor is safe one.

And while Ms. Santamaria insists that Y.D.D.L.C. must be released to her mother L.D.D.L.C., *immediately*, her mother withdrew her application for sponsorship of Y.D.D.L.C. on February 10, 2026, and designated her former household member, E.R.M., as the new potential sponsor. Biswas Decl. ¶ 37. Ms. Santamaria's request in the alternative for the Court to order immediate release of Y.D.D.L.C. to E.R.M. or an unspecified "appropriate caregiver approved by the Court" is inappropriate where ORR has not made a determination regarding E.R.M.'s suitability and a decision regarding release, and no other potential sponsor has come forward for vetting.

The applicable suitability determination process needs to be followed to ensure

Y.D.D.L.'s safety and well-being. Having failed to establish unlawful custody, the Petition should be denied.

II. LEGAL FRAMEWORK

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 (the "Foundational Rule"), codified at 45 CFR 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 UACs and thus led to the conditional and partial termination of the FSA as to ORR in June 2024.[1] *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 UACs 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 works with the referring federal government department or agency to accept transfer of custody of the UAC, consistent with the statutory and regulatory requirements at 8 U.S.C. § 1232(b)(3) and 45 C.F.R. §

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

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 alien 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 visited 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 persons 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 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 visited 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 UACs. *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 visited 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 UACs 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. Biswas Decl. ¶ 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. Biswas Decl. ¶ 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." UACB Policy Guide § 2.1; *see also* Biswas Decl. ¶ 15. There are four categories of potential sponsors: (1) Category 1, consisting of

parents or legal guardians; (2) Category 2, consisting of siblings, half-siblings, grandparents, or immediate relatives (such as aunts, uncles, and cousins), and other biological relatives and relatives through marriage; and (3) Category 3, consisting of other sponsors, such as distant relatives and unrelated adult individuals. UAC Policy Guide § 2.2.1; Biswas Decl. ¶ 15. 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; Biswas Decl. ¶ 18.

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; Biswas Decl. ¶ 16. 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; Biswas Decl. ¶ 16.

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; Biswas Decl. ¶¶ 18-21.

Once the assessment of the potential sponsor is complete, the care provider makes a release recommendation to ORR. UACB Policy Guide § 2.7; Biswas Decl. ¶ 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. Biswas Decl. ¶ 22. ORR makes the final release decision. UACB Policy Guide § 2.7; Biswas Decl. ¶ 22. 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; Biswas Decl. ¶ 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. UACB Policy Guide § 2.7.4; Biswas Decl. ¶ 23; *see also* 45 C.F.R. § 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 taxpayer 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); *see also* Biswas Decl. ¶ 17. 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; Biswas Decl. ¶ 26. 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. *See* 45 C.F.R. § 410.1205(c); UACB Policy Guide § 2.7.7; Biswas Decl. ¶ 26. 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; Biswas Decl. ¶ 26.

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; Biswas Decl. ¶ 26.

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; Biswas Decl. ¶ 27. 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. UACB Policy Guide § 2.7.8; Biswas Decl. ¶ 27. 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. UACB Policy Guide § 2.7.8; Biswas Decl. ¶ 27.

III. FACTUAL AND PROCEDURAL BACKGROUND

As noted above, the four minor Petitioner entered the United States as an unaccompanied alien child.

Case Status for Y.D.D.L.C.

According to the information provided by the Department of Homeland Security Customs and Border Protection, Y.D.D.L.C. was apprehended on September 20, 2026, in or around San Ysidro, California. Biswas Decl. ¶ 29. On September 21, 2025, Y.D.D.L.C. was referred to ORR custody. Id. She was admitted on September 22, 2025, to Crittenton

Shelter in Fullerton, California. *Id.*

On September 22, 2025, the case manager at Crittenton Shelter contacted the child's purported mother, L.D.D.L.C., who agreed to sponsor her. *Id.* ¶ 30.

On September 24, 2025, the case manager contacted L.D.D.L.C. to request birth certificates to establish their proof of relationship. *Id.* ¶ 31.

On September 30, 2025, ORR attempted to contact L.D.D.L.C. but was unsuccessful. *Id.* ¶ 32. Later the same day, L.D.D.L.C. returned the call. *Id.* At that time, ORR explained the sponsor application process and reviewed required documents. *Id.* L.D.D.L.C. confirmed her interest in sponsoring her daughter and a link to access the sponsorship application was sent to her. *Id.* ORR also provided further technical assistance to L.D.D.L.C. in initiating the sponsor application. *Id.*

On October 1, 2025, ORR contacted L.D.D.L.C. to discuss the progress made on the sponsorship application. *Id.* ¶ 33. L.D.D.L.C. was informed that information and documents remained missing or outstanding. *Id.* L.D.D.L.C. confirmed she had additional household members who had not yet been listed but stated all were willing to participate in the vetting process. *Id.* The Federal Field Specialist ("FFS") assigned to L.D.D.L.C.'s application requested that she provide photos of identity documents for all individuals. *Id.* In response, L.D.D.L.C. sent photos of identification for seven other adult household members, and was informed they would need to be added to the sponsor application. *Id.* On October 10, 2025, ORR reviewed the sponsorship application that had been completed and signed by the potential sponsor. *Id.* The signed application failed to list the additional household members disclosed on October 1, 2025. *Id.*

On October 15, 2025, Y.D.D.L.C. was transferred to Marsell Wellness Center – Riverside, located in Riverside, California. *Id.* ¶ 34.

On October 17, 2025, ORR informed L.D.D.L.C. that the proof of address submitted also did not meet ORR policy requirements and was currently outstanding. *Id.* ¶ 35.

On October 23, 2025, ORR contacted the potential sponsor to remind her of the

need for proof of address documents in line with ORR policy requirements. *Id.* ¶ 36. L.D.D.L.C. reported she would be going to the bank to obtain a statement as she did not have any other compliant documents. *Id.* L.D.D.L.C. later sent a copy of a bank statement. *Id.*

On November 4, 2025, ORR contacted L.D.D.L.C. to remind her that there were Authorization for Release of Information ("ARI") forms missing for household members. *Id.* ¶ 37. She was advised that these forms were needed before required background checks could be initiated. *Id.* At that time, L.D.D.L.C.'s fingerprint appointment was also scheduled for November 8, 2025, the first day L.D.D.L.C. reported that she would be available. *Id.*

Between November 6 and 7, 2025, L.D.D.L.C. provided the remaining ARIs for all seven household members. *Id.* ¶ 38. One household member was scheduled for a fingerprinting appointment on November 7, 2025. Five were scheduled for the following day, and one fingerprint appointment remained pending confirmation of availability.

On November 12, 2025, L.D.D.L.C. requested a same-day appointment for the remaining household member. *Id.* ¶ 39. The fingerprinting appointment was scheduled. *Id.*

On November 14, 2025, L.D.D.L.C. requested an appointment for another household member who had missed his original appointment. *Id.* ¶ 40. The appointment was scheduled for November 15, 2025. *Id.*

On November 19, 2025, L.D.D.L.C. contacted ORR requesting an update on her application. *Id.* ¶ 41. The FFS reviewed the results of the fingerprint-based background checks and noted that there was an incorrectly reported birth date for one of the household members on the application. *Id.* The potential sponsor was informed that it would need to be corrected. *Id.* During the conversation, L.D.D.L.C. also alluded to there being children in the home. *Id.* L.D.D.L.C. was informed these individuals must be listed on the sponsorship application as well. *Id.*

On December 5, 2025, L.D.D.L.C. contacted the FFS and requested to withdraw

her application so that her household member, E.R.M., could sponsor Y.D.D.L.C. *Id.* ¶ 42.

On December 10, 2025, L.D.D.L.C. provided a letter formally withdrawing her sponsorship application. However, after further discussion with the FFS, L.D.D.L.C. asked that the withdrawal letter not be submitted and requested time to speak with the child so that she could further assess the situation. *Id.* ¶ 43. On December 16, 2025, L.D.D.L.C. confirmed that she wanted to proceed with withdrawing from the case and resubmitted her letter and informed ORR that she would be moving out of the home. *Id.* ¶ 44. On December 18, 2025, the internet-based background check results for all household members were received. Four of the seven household members returned with "not clear" results due to criminal history. *Id.* ¶ 45. On January 20, 2026, L.D.D.L.C. confirmed she had moved out of the home and provided proof of her new address. *Id.* ¶ 46.

On February 10, 2026, L.D.D.L.C. designated her former household member, Erika, as the new sponsor. *Id.* ¶ 47. Erika was sent the sponsorship application the same day. *Id.*

In March 2026, ORR learned that two of Erika's adult children had been living in the home but were not disclosed on L.D.D.L.C.'s prior sponsorship application. *Id.* ¶ 48. On April 1, 2026, the two household members were added to the sponsorship application. They provided their ARI forms the same day. *Id.* ¶ 49.

On April 3, 2026, the two additional household members were scheduled for fingerprint-based background check appointments for the next day. *Id.* ¶ 50. On April 22, 2026, the sponsorship application was re-opened as there were additional children not previously disclosed that needed to be added to the application. *Id.* ¶ 51.

On May 1, 2026, the potential sponsor, E.R.M., signed the final portion of the sponsorship application. *Id.* ¶ 52. However, Erika's ARI had to be reopened after missing addresses were disclosed. *Id.*

On May 4, 2026, Erika signed an updated ARI. She also provided copies of her birth certificate, her brother's birth certificate, and Y.D.D.L.C.'s brother's birth certificate

to prove that she is the paternal aunt of Y.D.D.L.C's older brother. *Id.* ¶ 53. Erika was also able to provide photos from a vacation a few years prior in their country of origin where she had been photographed with the child and her family. *Id.*

On May 8, 2026, the Sponsor Assessment was considered to have been completed. *Id.* ¶ 54.

On May 20, 2026, the FFS reviewed the fingerprint results for all household members and identified criminal history for one of the household members. *Id.* ¶ 55.

On May 29, background checks were run once again as previous checks had expired. ORR contacted the household member with criminal history and requested court documents and a written statement regarding their criminal history. *Id.* ¶ 56. On June 2, 2026, ORR received a statement from the household member regarding his arrest history. *Id.* ¶ 57. The household member disclosed that he had been arrested and charged with battery and stated that the charge was dismissed a year later. *Id.* As a result, they were cleared. *Id.* Because the charges were dismissed and did not meet criteria for a mandatory denial under UACB Policy, the FFS cleared the fingerprint results. *Id.*

On June 5, 2026, the case was referred for a home study. This home study included a home visit that occurred on June 11, 2026, and ultimately resulted in a positive home study recommendation. Id. ¶ 58.

On June 13, 2026, the final home study report was submitted to ORR. At this time, ORR was pending receipt of social security numbers or ITINs for Erika and all household members and receipt of the report from ORR's Division of Vetting (DOV). *Id.* ¶ 59. The purpose of this report is to verify whether there are any pending or open investigations against the household members, which would not appear on the fingerprint-based background checks. *Id.* A referral was made for the required in-person ID check as well. *Id.*

On July 1, 2026, L.D.D.L.C. contacted ORR to request an update. The sponsor stated that she would be out of the country from July 7, 2026, through July 14, 2026. *Id.* ¶ 60.

On July 8, 2026, the results of the DOV report came back confirming there was derogatory information, but that it likely did not impact the suitability of the sponsor. *Id.* ¶ 61. The report returned as derogatory based primarily on the criminal history of the household member and due to several household members' names not being an exact match to the names on file with the Social Security Administration. *Id.*

On July 15, 2026, ORR received proof of social security numbers for the six adult household members and an updated identification document for the household member whose identification document had expired. *Id.* ¶ 62.

On July 16, 2026, ORR initiated updated internet-based background checks as the previous background checks expired. *Id.* ¶ 63. Upon receipt of the updated background check results, ORR will promptly make its final sponsor suitability determination and release decision. *Id.*

IV. ARGUMENT

1. Administrative Exhaustion Is Appropriate Here

Petitioners' habeas action is untimely where, as here, the sponsorship application for Y.D.D.L.C. is 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 the sponsorship application for E.R.M., Y.D.D.L.'s sponsor, remains pending and an important vetting requirement, updated internet background checks, has not yet been completed. *See* Biswas Decl. ¶¶ 63.

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 the potential sponsor for Y.D.D.L.C. and assisting her sponsorship process which remains ongoing. *See generally* Biswas Decl. ¶¶ 47–63. Further, there is no allegation whatsoever that ORR is preventing the potential sponsor for Y.D.D.L.C. from completing outstanding sponsorship requirements, in fact, the record shows that specialists met with each potential sponsor on multiple occasions to help her 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 4. 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.

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2. 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 Petitioner entered the United States designated as an unaccompanied alien child by DHS. Biswas Decl. ¶ 29. This means that ORR took custody of Y.D.D.L.C. under the HSA. And in that circumstance, the TVPRA reinforces and expands upon the government's responsibility for the care of UACs. Unlike adults in the custody of other agencies, ORR cannot simply release a child 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 a 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 Y.D.D.L.C.'s potential sponsor, E.R.M., has a pending application with ORR to take custody of her so that ORR can make a considered decision of any kind. Biswas Decl. ¶ 63. 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 the sponsorship application for E.R.M. is currently in the sponsor-assessment process and nearly complete, ORR's actions in this matter strictly follow the statutory requirements. As discussed above, ORR is prohibited from releasing Petitioner 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 Petitioner should not be released to her potential sponsor, E.R.M., unless and until ORR deems her suitable.

3. Nothing About ORR's Continued Care for Petitioner Violates the Fifth Amendment.

A. Procedural Due Process

Petitioner argues in her Third Claim for Relief that ORR's custody of her constitutes a procedural due process violation because she has a liberty interest under the Due Process Clause, asserting that Respondents' policies and actions have deprived her of freedom from confinement without constitutionally sufficient due process and that her further detention bears no reasonable relation to a legitimate government purpose. Pet. ¶¶ 100-115, 136-146. Petitioner's 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 Y.D.D.L.C. being free from custody and that of a right to family integrity or familial association between the child and her mother who sought to sponsor her. Pet. ¶ 138. Neither interest outweighs the remaining *Mathews* factors under the circumstances of

these cases where the sponsorship application for Y.D.D.L.C. remains pending, and the potential sponsor has yet to complete an essential vetting requirement. Biswas Decl. ¶ 63. Moreover, ORR is actively assisting the current potential sponsor, E.R.M., in completing them. *See generally* Biswas Decl. ¶ 47-63.

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 UACs 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).[2] 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 inform denied potential sponsors that they are entitled to be represented by counsel

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[2] Petitioner misleadingly cites to the *Lucas R* decision for the proposition that the TVPRA at 8 U.S.C. § 1232(c)(2)(A) creates a substantive interest protected by the Due Process Clause by using mandatory language that imposes an obligation on ORR to promptly place a UAC "in the least restrictive setting that is in the best interest of the child." Pet. ¶ 76. While the *Lucas R* court did discuss the mandatory language in that TVPRA section, the court went on say that the statement "does not contain specific substantive limits on Defendants' discretion, and in fact uses non-mandatory language to delineate what factors Defendants 'may' consider in making placements." *See Lucas R.*, 2022 WL 3908829, at *21.

[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 (but not distant relatives or non-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.

(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, Y.D.D.L.C's initial sponsor, her mother, withdrew her sponsor application without completing vetting requirements and designated E.R.M., a distant relative, as a new sponsor. Biswas Decl. ¶ 47. E.R.M.'s sponsorship application is still pending, and ORR has not made a final decision whether it is safe to release Y.D.D.L.C. to her. Biswas Decl. ¶ 63.

Petitioner has likewise not made any showing of unreasonable delay. The record demonstrates that ORR initially engaged with L.L.D.L.C. regarding additional required information for sponsoring her daughter, Y.D.D.L.C, and other necessary steps before she withdrew her sponsor application, and continued to work with her new sponsor, E.R.M. *See generally id* at ¶¶ 30-63.

Critically, as the court in *JECM* explained, "[t]he potential exploitation of [UACs] 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 UACs 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 Petitioner's case demonstrates that ORR has not violated her or her potential sponsors' procedural due process rights.

B. Substantive Due Process.

In her Second Claim for Relief, Petitioner asserts a violation of the substantive component of the Due Process Clause, arguing that ORR's continued care of her infringes on her and her mother's liberty interest in family integrity and association. Pet. ¶¶ 125–135. "Substantive due process is far narrower in scope than procedural due

process" and requires Petitioner to show not only that she was 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 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 Circ. 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 the Petitioner's mother has in raising her 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). Thus, "the constitutionality of state actions that interfere with family integrity depends on the adequacy of the procedures available to contest those actions." *Id.* at 588 (citing *D.B.*, 826 F.3d at 741) (internal quotation marks omitted). As shown above, ORR has put in place ample due process procedures in its regulations and policy which enable denied potential sponsors who are parents to contest ORR's release decisions. Here, however, Y.D.D.L.C.'s mother, L.D.D.L.C., withdrew her sponsor application before completing requirements for sponsorship of her daughter, and designating a new sponsor for her, E.R.M. Biswas Decl. ¶ 47.

Further, to demonstrate that governmental conduct "shocks the conscience," "[Petitioner] must allege conduct that is 'patently egregious' or 'outrageous,' that 'violates the decencies of civilized conduct,' or that fails to 'comport with traditional ideas of fair play and decency." *J.E.C.M*, 352 F.Supp.3d at 586-87 (citing *County of Sacramento v. Lewis*, 523 U.S. 833, 846–49 (1998)) (internal quotation marks and

citations omitted in the original). Moreover, "[t]o be sufficiently egregious, the official conduct must do more than produce a harmful or unfortunate result . . . rather, the conduct must be so out of step with contemporary norms and comparable governmental practices that no decent society can tolerate it." *Id.* (citation omitted). Under the circumstances here, where L.D.D.L.C. withdrew her sponsor application and designated a new sponsor, E.R.M., *see* Biswas Decl. ¶¶ 47; vetting requirements for E.R.M. are still pending, *see id.* ¶ 63; and ORR has actively assisted the E.R.M. in completing sponsorship requirements, *see generally* id. ¶¶ 47-63, ORR's conduct cannot be said to "shock the conscience." *See D.B.*, 826 F.3d at 741 ("[W]hen a state's interference with parental control is predicated on a determination that the parent is unable to provide adequate care for a child, such interference does not contravene substantive due process, at least in the absence of governmental action that shocks the conscience"). Thus, Petitioner's substantive due process challenge is unavailing.

V. Petitioner's TVPRA Claim Fails.

In her First Claim for Relief, Petitioner asserts that ORR violated the TVPRA's requirement that Y.D.D.L.C., as a UAC, be placed in "the least restrictive setting that is in his best interests. Pet. ¶¶ 116-124. 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.

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." 5 U.S.C. § 704. Here, however, where no statute makes ORR's preliminary sponsor vetting efforts reviewable, the sponsorship applications for the current potential sponsor of Y.D.D.L.C., E.R.M., is being processed, an essential vetting requirement is still pending (updated internet background checks), and ORR has not made its final agency decision regarding the suitability of the potential sponsor and the safety of releasing Petitioner to her, judicial review of such a claim under the APA is not available. Biswas Decl. ¶ 47-63.

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. *See 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).[5] ORR is actively engaged with the new

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

[5] Petitioner also argues that Respondents failed to timely process the sponsorship applications her potential sponsor in accordance with Foundational Rule requirements. *See, e.g.*, Pet. at ¶ 33. This assertion has no 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, Petitioners 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)).

ORR has followed applicable laws, policies, and regulations in processing each of

(footnote cont'd on next page)

potential sponsor designated by Y.D.D.L.C.'s mother, E.R.M., in the ongoing sponsorship process but has not yet made the determination whether the Petitioner may safely be released. Biswas Decl. ¶ 63. Upon receipt of the updated background check results, ORR will promptly make its final sponsor suitability determination and release decision. *Id.*

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the sponsorship applications. These included laws requiring ORR to consider the safety and suitability of any placement. Notably, 45 C.F.R. § 410.1205(b), cited by Petitioner (*see* Pet. ¶ 33) refers to adjudication of a "completed" sponsorship application. The record reflects that the pending applications for the potential sponsor of Y.D.D.L.C. is not yet complete, and an important vetting requirement, updated internet background checks, remains pending. Biswas Decl. ¶ 63. Upon receipt of the updated background check results, ORR will promptly make its final sponsor suitability determination and release decision. *Id.*

Petitioner does not specifically assert a claim under *Accardi*, but any such claim would fail 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).

VI. Conclusion

For the foregoing reasons, Respondents respectfully request that the Petition be denied.

Dated: July 16, 2026

Respectfully submitted,

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

Y.D.D.L.C., a minor, by and through Erica Santamaria as Guardian Ad Litem, Petitioner, v. ANGIE SALAZAR, ET AL, Respondents.	No. 5:26-cv-03705-WLH-DSR **DECLARATION OF TOBY BISWAS**

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

1. I am the Assistant Deputy Director for Policy for the Unaccompanied Alien Children Bureau ("UACB"), and manage the Division of Policy Coordination &

Intergovernmental Affairs, and the Division of Policy Administration & Legal Affairs within the Office of Refugee Resettlement ("ORR"), an entity within the Administration for Children and Families ("ACF"), U.S. Department of Health and Human Services ("HHS").

2. I have held various roles within ORR since joining the agency in November 2009, and I have held my current role since August 2025. My responsibilities encompass the development and implementation of ORR's policies and procedures concerning the care and custody of unaccompanied alien children ("UACs"). In this capacity, I am responsible for ensuring ORR's implementation of and compliance with programmatic policy prerogatives and statutory responsibilities, including those arising under the Homeland Security Act of 2002 ("HSA"), 6 U.S.C. § 279; Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), 8 U.S.C. § 1232; and ORR's regulations, including the Foundational Rule, 45 CFR part 410.

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

Care and Placement of Unaccompanied Alien Children in ORR Custody

4. An unaccompanied alien child is a child who has no lawful immigration status in the United States; has not attained 18 years of age; and with respect to whom

there is no parent or legal guardian in the United States or no parent or legal guardian in the United States is available to provide care and physical custody. 6 U.S.C. § 279(g)(2).

5. Pursuant to the TVPRA, "any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child." 8 U.S.C. § 1232(b)(3). Therefore, ORR only takes children into its custody upon referral by another federal agency.

6. ORR "shall accept referrals of unaccompanied children, from any department or agency of the Federal Government at any time of day, every day of the year." 45 C.F.R. § 410.1101(a). Further, ORR has no ability to refuse a referral when the referring federal agency transfers custody to it of an individual that the other agency has determined to be a UAC. *See generally* 8 U.S.C. § 1232(b).

7. After a federal department or agency notifies ORR that a child in its custody is a UAC, ORR identifies a program placement for the child. 45 C.F.R. § 410.1101(b). To do so, ORR requests background information from the referring federal agency to assess, among other things, whether the unaccompanied alien child is a danger to himself or others, whether there are any known medical and/or mental health issues, or whether other special concerns or needs are known. ORR uses this

information to determine an appropriate placement for the child in the least restrictive setting appropriate for the child's needs. 45 C.F.R. §§ 410.1103(a) & (b); ORR UACB Policy Guide ("UACB Policy Guide"), § 1.3.1, *available at* https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide.

8. 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 the UAC's specific individualized needs. 45 C.F.R. § 410.1102; UACB Policy Guide § 1.2.

Policies for an Unaccompanied Alien Child's Safe and Timely Release

9. 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).

10. 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.

11. The TVPRA prohibits HHS from releasing a child to a proposed custodian unless HHS first "makes a determination that the proposed custodian is capable of providing for the child's physical and mental well-being," which "shall, at a minimum,

include verification of the custodian's identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child." 8 U.S.C. § 1232(c)(3)(A).

12. In addition, under its regulations, which implement the settlement agreement in *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997) (the "*Flores* Settlement Agreement" or "FSA"),[1] ORR assesses all potential sponsors (even when the potential sponsor is a child's parent or legal guardian) before making any release determination, including a review of the potential sponsor's strengths, resources, risk factors, and relationship to the UAC. *See, e.g.*, 45 C.F.R. §§ 410.1201(a); 1202(b) & (c) (implementing Paragraphs 14 and 17 of the FSA, respectively).

13. Further, as part of the sponsor suitability assessment process, "ORR shall evaluate the unaccompanied child's current functioning and strengths in conjunction

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

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).

14. 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 of the child if the sponsor abuses or neglects a child after the child 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.

15. The process for the safe and timely release of an unaccompanied alien child from ORR custody involves several steps, including: the identification of sponsors; sponsor application; interviews; the assessment (evaluation) of sponsor suitability, including verification of the sponsor's identity and relationship to the child (if any), background checks, and in some cases home studies; and post-release planning. *See generally* 45 C.F.R. part 410, subpart C. Also, under ORR sub-regulatory guidance, there are three categories of potential sponsors: (1) Category 1, consisting of parents or legal guardians; (2) Category 2, consisting of siblings, half-siblings,

grandparents, or immediate relatives (such as aunts, uncles, and cousins), and other biological relatives and relatives through marriage; (3) Category 3, consisting of other sponsors, such as distant relatives and unrelated adult individuals. Additionally, ORR classifies cases as Category 4 when no sponsor has been identified. *See* UACB Policy Guide § 2.2.1.

16. 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, income, 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.

17. With respect to the background check process, Title VIII, Section 8701(b)(1) of the One Big Beautiful Bill 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 residents of the potential sponsor's household; . . . ." (emphasis added).

18. 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.

19. The TVPRA provides ORR with the authority to conduct home studies, and states: "A home study *shall* be conducted for a child who is a victim of a severe form of trafficking in persons, a special needs child with a disability (as defined in Section 12102 of Title 42), a child who has been a victim of physical or sexual abuse under circumstances that indicate that the child's health or welfare has been significantly harmed or threatened, or a child whose proposed sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence." 8 U.S.C. § 1232(c)(3)(B) (emphasis added); *see also* 45 C.F.R. § 410.1204(b)(1).

20. Additionally, per 45 C.F.R. § 410.1204(b)(2)&(3), ORR requires a home study "[b]efore releasing any child to a non-relative sponsor who is seeking to sponsor multiple children, or who has previously sponsored or sought to sponsor a child and is seeking to sponsor additional children. ORR also requires a home study "[b]efore

releasing any child who is 12 years old or younger to a non-relative sponsor." *Id.*

21. Under 45 C.F.R. § 410.1204(c), ORR may also initiate home studies if it determines that a home study is likely to provide additional information which could assist in determining that the potential sponsor is able to care for the health, safety, and well-being of the child.

22. Once the assessment of the potential sponsor is complete, ORR makes a release determination. UACB Policy Guide § 2.7. The determination 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. ORR makes the final release decision. *Id.* Release decisions include: (1) approve release to sponsor; (2) approve release with post-release services; (3) conduct a home study before a final release decision; (4) deny release; or (5) remand for further information. *Id.*

23. In general, ORR denies release if: (1) the potential sponsor is not willing or able to provide for the child's physical or mental well-being; (2) the potential sponsor is not willing to complete the mandatory fingerprint check; (3) the physical environment of the home presents a risk to the child's safety or well-being; or (4) release of the UAC would present a risk to him or herself, the sponsor, household, or community. *Id.* § 2.7.4; 45 C.F.R. § 410.1205. Additionally, pursuant to UACB Policy Guide § 2.7.4, ORR may deny release to a Category 1 potential sponsor, and must deny

release to a Category 2 or Category 3 potential sponsor, 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;
- has knowingly provided false information, committed perjury, or submitted fraudulent documentation during the sponsor assessment process;
- has an adverse child welfare finding;
- is unwilling or unable to complete sponsor vetting requirements (and no express waiver has been granted by the ORR Director or their designee); or
- is under active criminal investigation.

24. In making placement decisions, 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 themself or others, ORR shall send the UAC and their counsel (if the UAC is represented by

counsel) a copy of the Notification of Denial and the child may seek an appeal of the denial. 45 C.F.R. § 410.1205(f).

25. Separately, the UAC, or their parent, or legal guardian, can request a risk determination hearing before an independent HHS hearing officer. *See* 45 C.F.R. § 410.1903. All UACs in restrictive placements based on a finding of dangerousness shall be afforded a hearing before an independent HHS hearing officer who determines, 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 a hearing. 45 C.F.R. § 410.1903(a). UACs placed in restrictive settings shall receive a written notice of the procedures. *Id.* Additionally, all other UACs in ORR custody may request a hearing to determine, through written decision, whether the UAC would present a risk of danger to themself or to the community if released. 45 C.F.R. § 410.1903(b). However, "[d]eterminations made under [45 C.F.R. § 410.1903] will not compel an unaccompanied child's release; nor will determinations made under [45 C.F.R. § 410.1903] compel transfer of an unaccompanied child to a different placement. Regardless of the outcome of a risk determination hearing or appeal, an unaccompanied child may not be released unless ORR identifies a safe and appropriate placement pursuant to [45 C.F.R. §§ 410.1200-1210]; and regardless of the outcome of a risk determination hearing or appeal, an unaccompanied child may only be transferred to another placement by ORR pursuant to requirements set forth at [45 C.F.R. §§

410.1100-1109 and 45 C.F.R. §§ 410.1600-1601]." 45 C.F.R. § 410.1903(j).

26. A denial letter issued to a potential sponsor will inform the sponsor that they have the right to request an appeal of the denial to the Departmental Appeals Board ("DAB") (as the Assistant Secretary's designee who is a neutral and detached decision maker) and will include instructions for doing so. 45 C.F.R. § 410.1205(c)(3). In deciding an appeal of a release denial, the DAB's role (as the Assistant Secretary's neutral and detached designee) 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 release was supported by substantial evidence. *See* 45 C.F.R. § 1206; ORR UACB Policy Guide § 2.7.4.

27. The DAB's decision (as the Assistant Secretary's designee) 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. *See* ORR UACB Policy Guide § 2.7.4. 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 circumstances of the potential sponsor and/or the unaccompanied alien child, ORR may assess the case anew. *Id.*

28. Additionally, to ensure due process rights and protect the best interests of children in ORR care, a prior release denial of an individual's sponsor application does not mean ORR will automatically deny their future sponsor application. *Id.* "In making a release decision, ORR will consider the totality of circumstances surrounding a sponsor application, that is, all information gathered related to the sponsor's relationship to and ability to care for the child." *Id.*

Case Status for Y.D.D.L.C.

29. According to the information provided by the Department of Homeland Security Customs and Border Protection, Y.D.D.L.C. was apprehended on September 20, 2026, in or around San Ysidro, California. On September 21, 2025, Y.D.D.L.C. was referred to ORR custody. *Id.* She was admitted on September 22, 2025, to Crittenton Shelter in Fullerton, California. *Id.*

30. On September 22, 2025, the case manager at Crittenton Shelter contacted the child's purported mother, L.D.D.L.C., who agreed to sponsor her.

31. On September 24, 2025, the case manager contacted L.D.D.L.C. to request birth certificates to establish their proof of relationship.

32. On September 30, 2025, ORR attempted to contact L.D.D.L.C. but was unsuccessful. Later the same day, L.D.D.L.C. returned the call. At that time, ORR explained the sponsor application process and reviewed required documents. L.D.D.L.C. confirmed her interest in sponsoring her daughter and a link to access the

sponsorship application was sent to her. ORR also provided further technical assistance to L.D.D.L.C. in initiating the sponsor application.

33. On October 1, 2025, ORR contacted L.D.D.L.C. to discuss the progress made on the sponsorship application. L.D.D.L.C. was informed that information and documents remained missing or outstanding. L.D.D.L.C. confirmed she had additional household members who had not yet been listed but stated all were willing to participate in the vetting process. The Federal Field Specialist ("FFS") assigned to L.D.D.L.C.'s application requested that she provide photos of identity documents for all individuals. In response, L.D.D.L.C. sent photos of identification for seven other adult household members, and was informed they would need to be added to the sponsor application. On October 10, 2025, ORR reviewed the sponsorship application that had been completed and signed by the potential sponsor. The signed application failed to list the additional household members disclosed on October 1, 2025.

34. On October 15, 2025, Y.D.D.L.C. was transferred to Marsell Wellness Center – Riverside, located in Riverside, California.

35. On October 17, 2025, ORR informed L.D.D.L.C. that the proof of address submitted also did not meet ORR policy requirements and was currently outstanding.

36. On October 23, 2025, ORR contacted the potential sponsor to remind her

of the need for proof of address documents in line with ORR policy requirements. L.D.D.L.C. reported she would be going to the bank to obtain a statement as she did not have any other compliant documents. L.D.D.L.C. later sent a copy of a bank statement.

37. On November 4, 2025, ORR contacted L.D.D.L.C. to remind her that there were Authorization for Release of Information ("ARI") forms missing for household members. She was advised that these forms were needed before required background checks could be initiated. At that time, L.D.D.L.C.'s fingerprint appointment was also scheduled for November 8, 2025, the first day L.D.D.L.C. reported that she would be available.

38. Between November 6 and 7, 2025, L.D.D.L.C. provided the remaining ARIs for all seven household members. One household member was scheduled for a fingerprinting appointment on November 7, 2025. Five were scheduled for the following day, and one fingerprint appointment remained pending confirmation of availability.

39. On November 12, 2025, L.D.D.L.C. requested a same-day appointment for the remaining household member. The fingerprinting appointment was scheduled.

40. On November 14, 2025, L.D.D.L.C. requested an appointment for another household member who had missed his original appointment. The appointment was scheduled for November 15, 2025.

41. On November 19, 2025, L.D.D.L.C. contacted ORR requesting an update on her application. The FFS reviewed the results of the fingerprint-based background checks and noted that there was an incorrectly reported birth date for one of the household members on the application. The potential sponsor was informed that it would need to be corrected. During the conversation, L.D.D.L.C. also alluded to there being children in the home. L.D.D.L.C. was informed these individuals must be listed on the sponsorship application as well.

42. On December 5, 2025, L.D.D.L.C. contacted the FFS and requested to withdraw her application so that her household member, E.R.M., could sponsor Y.D.D.L.C.

43. On December 10, 2025, L.D.D.L.C. provided a letter formally withdrawing her sponsorship application. However, after further discussion with the FFS, L.D.D.L.C. asked that the withdrawal letter not be submitted and requested time to speak with the child so that she could further assess the situation.

44. On December 16, 2025, L.D.D.L.C. confirmed that she wanted to proceed with withdrawing from the case and resubmitted her letter and informed ORR that she would be moving out of the home.

45. On December 18, 2025, the internet-based background check results for all household members were received. Four of the seven household members returned with "not clear" results due to criminal history.

46. On January 20, 2026, L.D.D.L.C. confirmed she had moved out of the home and provided proof of her new address.

47. On February 10, 2026, L.D.D.L.C. designated her former household member, E.R.M., as the new sponsor. E.R.M. was sent the sponsorship application the same day.

48. In March 2026, ORR learned that two of E.R.M.'s adult children had been living in the home but were not disclosed on L.D.D.L.C.'s prior sponsorship application.

49. On April 1, 2026, the two household members were added to the sponsorship application. They provided their ARI forms the same day.

50. On April 3, 2026, the two additional household members were scheduled for fingerprint-based background check appointments for the next day.

51. On April 22, 2026, the sponsorship application was re-opened as there were additional children not previously disclosed that needed to be added to the application.

52. On May 1, 2026, the potential sponsor, E.R.M., signed the final portion of the sponsorship application. However, E.R.M. ARI had to be reopened after missing addresses were disclosed.

53. On May 4, 2026, E.R.M. signed an updated ARI. She also provided copies of her birth certificate, her brother's birth certificate, and Y.D.D.L.C.'s brother's birth

certificate to prove that she is the paternal aunt of Y.D.D.L.C's older brother. E.R.M. was also able to provide photos from a vacation a few years prior in their country of origin where she had been photographed with the child and her family.

54. On May 8, 2026, the Sponsor Assessment was considered to have been completed.

55. On May 20, 2026, the FFS reviewed the fingerprint results for all household members and identified criminal history for one of the household members.

56. On May 29, background checks were run once again as previous checks had expired. ORR contacted the household member with criminal history and requested court documents and a written statement regarding their criminal history.

57. On June 2, 2026, ORR received a statement from the household member regarding his arrest history. The household member disclosed that he had been arrested and charged with battery and stated that the charge was dismissed a year later. As a result, they were cleared. Because the charges were dismissed and did not meet criteria for a mandatory denial under UACB Policy, the FFS cleared the fingerprint results.

58. On June 5, 2026, the case was referred for a home study. This home study included a home visit that occurred on June 11, 2026, and ultimately resulted in a positive home study recommendation.

59. On June 13, 2026, the final home study report was submitted to ORR. At

this time, ORR was pending receipt of social security numbers or ITINs for E.R.M. and all household members and receipt of the report from ORR's Division of Vetting (DOV). The purpose of this report is to verify whether there are any pending or open investigations against the household members, which would not appear on the fingerprint-based background checks. A referral was made for the required in-person ID check as well.

60. On July 1, 2026, L.D.D.L.C. contacted ORR to request an update. The sponsor stated that she would be out of the country from July 7, 2026, through July 14, 2026.

61. On July 8, 2026, the results of the DOV report came back confirming there was derogatory information, but that it likely did not impact the suitability of the sponsor. The report returned as derogatory based primarily on the criminal history of the household member and due to several household members' names not being an exact match to the names on file with the Social Security Administration.

62. On July 15, 2026, ORR received proof of social security numbers for the six adult household members and an updated identification document for the household member whose identification document had expired.

63. On July 16, 2026, ORR initiated updated internet-based background checks as the previous background checks expired. Upon receipt of the updated background check results, ORR will promptly make its final sponsor suitability

determination and release decision.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Washington, D.C.

July 16, 2026

TOBY R. BISWAS -S

Digitally signed by TOBY R. BISWAS -S
Date: 2026.07.16 19:28:29 -04'00'

Toby Biswas
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