UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

D.A.G.M., Petitioner,	)	
v.	)	No. 26 C 9971
MARKWAYNE MULLIN, Secretary of Homeland Security, *et al.*, Respondents.	)	Judge Coleman

RESPONSE IN OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS

D.A.G.M. is a 17-year-old 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 October 30, 2025. *See* Declaration of Toby Biswas ("Biswas Decl.") ¶ 29.

Introduction

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. ORR must investigate to ensure that the child's release to a sponsor is safe one. In this case, for example, ORR reached out to the purported brother in October 2025. Biswas Decl. ¶ 30. The purported brother ultimately indicated to ORR that he did not want to pursue sponsorship because he and members of his household lacked valid documentation for the process. Biswas Decl. ¶ 35. And it was not until August 21, 2026 (after the instant petition was filed), that D.A.G.M.'s purported brother sought to renew the process. Biswas Decl. ¶ 54.

Although this is a daunting process, ORR is conducting it in good faith and D.A.G.M.'s petition should be denied because the agency is complying with applicable statutes and regulations, which make it responsible for the care and custody of UACs, and require it to make placement determinations for all who are in federal custody by reason of their age and immigration status. And while D.A.G.M. insists that he must be released to his purported brother *immediately*, this request is inappropriate where ORR has not yet completed most of the sponsor verification steps necessary to make a determination regarding his purported brother's suitability and a decision regarding release.

In short, ORR maintains that the suitability determination process needs to be followed to ensure D.A.G.M.'s safety and well-being. Having failed to establish unlawful custody, the petition should be denied.

Background

I. Statutory and Regulatory Background

A. The Homeland Security Act of 2002 ("HSA")

In 2002, Congress enacted the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135 (codified in relevant part at 6 U.S.C. § 279), abolishing the Immigration and Naturalization Service ("INS") and transferring the responsibility for the care and placement of UAC 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 Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA") 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 Unaccompanied Children Program 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. Specifically, the Foundational Rule provides that ORR must release UAC from its custody "[s]ubject to an assessment of sponsor suitability," 45 C.F.R. § 410.1201, a process which starts with an "application package" that "[p]otential sponsors shall complete." *Id.* § 410.1202(a). The assessment of sponsor suitability includes "review of the potential sponsor's application package, including verification of the potential sponsor's identity, physical environment of the sponsor's home, and relationship to the unaccompanied child, if any, and an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the unaccompanied child." *Id.* § 410.1202(b).

While ORR is attempting to identify and vet a sponsor, ORR generally places minors in "standard programs that are not restrictive placements." 45 C.F.R. § 410.1104. Standard programs must be "licensed by an appropriate State agency to provide residential, group, or transitional or long-term home care services for dependent children" or meet the requirements of state licensing that would otherwise be applicable in states that do not license programs that care for UACs. 45 C.F.R. § 410.1001.

To carry out its statutory and regulatory mandate under the HSA and TVPRA, and 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 Unaccompanied Alien Chidren Bureau Policy Guide ("UACB Policy Guide") at Section 2. *See* UACB Policy Guide, available at https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide (last visited Sept. 3, 2026).

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 UAC 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; Biswas Decl. ¶ 15.[1]

A potential sponsor must complete a sponsorship application package, provide unexpired government-issued identification documentation for the sponsor and any other adults living in the

[1] There are three categories of potential sponsors: (1) Category 1, consisting of parents or legal guardians, including qualifying step-parents that have legal or joint custody of the child or teen; (2) Category 2, consisting of siblings, grandparents, or other immediate relatives (such as aunts, uncles, first cousins), and includes biological relatives, relatives through marriage, and half-siblings; and (3) Category 3, consisting of other sponsors, such as distant relatives, unrelated adult individuals, or an institutional/organizational sponsor. *Id.* § 2.2.1. Additionally, ORR classifies cases as Category 4 when no potential sponsor has been identified. *Id.*

household or identified in a sponsor care plan, and, along with any adult living in his or her household, undergo a background check. *Id.* §§ 2.2.4, 2.5; Biswas Decl. ¶ 16. All potential sponsors must also submit proof of address, income, sponsor-child relationship, individual taxpayer identification number or social security number, and criminal history documents (if applicable). *Id.* § 2.2.4; Biswas Decl. ¶ 17. 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. *Id.* § 2.4.2; Biswas Decl. ¶ 18.

Once the assessment of the potential sponsor is complete, the care provider makes a recommendation release. UACB Policy Guide § 2.7; Biswas Decl. ¶ 23 ORR makes the final release decision. *Id.* ORR will deny the sponsorship application of a potential sponsor who ORR determines is not capable of providing for the physical and mental well-being of the UAC or if the placement would result in danger to the child or the community. 45 C.F.R. § 410.1205 (Release decisions; denial of release to a sponsor).

II. Factual Background

D.A.G.M. entered federal custody as a UAC on October 29, 2025 and was referred to ORR care on October 30, 2025. Biswas Decl. ¶ 29.[2] On October 30, 2025, ORR contacted D.A.G.M.'s purported brother, who expressed interest in pursuing sponsorship, and the agency emailed him a sponsorship application package. *Id.* ¶ 30. Biological verification of the sibling relationship was not established, but D.A.G.M.'s birth certificate was verified. *Id.* The next day, D.A.G.M. was admitted to BCC Caminos – Cunningham Children's Home, a shelter in Urbana, Illinois. *Id.*

On November 6, 2025, the BCC Caminos-Cunningham Children's Home therapist

[2] Petitioner improperly names the U.S. Department of Homeland Security ("DHS") and DHS's Secretary (Markwayne Mullin) as a party in this matter. DHS is not responsible for the care and custody of Petitioner.

submitted an Office of Trafficking in Persons ("OTIP") referral, which means that the facility formally reported that the child may be a victim of human trafficking (labor or sex trafficking). *Id.* ¶ 31. On November 7, 2025, an ORR Division of Sponsor Administration ("DSA") Federal Field Specialist ("FFS or field specialist") was assigned to the case. *Id.* ¶ 32. OTIP requested additional information for the trafficking referral, and the therapist gathered and submitted requested information. *Id.*

On November 12 and 13, 2025, D.A.G.M.'s immigration case was transferred to Chicago and a hearing before an immigration judge was scheduled for him on November 19, 2025. *Id.* ¶ 33. On November 14, 2025, an ORR field specialist contacted the potential sponsor to determine his interest in completing an application and undergoing vetting. *Id.* ¶ 34. On November 21, 2025, the potential sponsor informed the field specialist that he no longer wished to pursue sponsorship of D.A.G.M., noting that he and his household members lacked valid identification required for the sponsor vetting process. *Id.* ¶ 35. Between November 23rd and 24th, 2025, ORR identified another possible sponsor, but that individual declined to proceed. ORR advised D.A.G.M. and his parents in his home country of Category 4 options, including long-term foster care (LTFC or foster care) and voluntary departure. D.A.G.M. expressed interest in the former. *Id.* ¶ 36.

On November 25, 2025, ORR contacted D.A.G.M.'s family in his home country, and his mother confirmed her support for D.A.G.M.'s interest in LTFC. The case manager e-mailed a legal service provider requesting a "good faith letter," which documents the transparent, cooperative efforts made in a UAC's placement. *Id.* ¶ 37. On December 18, 2025, the legal service provider and OTIP contacted the program regarding foster care referral. *Id.* ¶ 38. The program continued gathering documents, and acquired a good faith letter the next day. *Id.* On January 28, 2026, D.A.G.M. was approved for transfer to St. Gabriel Maryville long term foster care in Des

Plaines, Illinois. *Id.* ¶ 40.

On February 3, 2026, D.A.G.M. met with the National Immigrant Justice Center (NIJC) Attorney for an initial legal meeting. *Id.* ¶ 41. On March 13, 2026, D.A.G.M. remained classified as a Category 4, with no potential sponsor identified for him. *Id.* ¶ 42. On March 14, 2026, ORR contacted D.A.G.M.'s mother to update her on his progress and inquire about new potential sponsors. *Id.* ¶ 43.

In late May 2026, D.A.G.M. was placed on the waitlist for child advocacy services, and OTIP denied D.A.G.M.'s referral, finding there was not sufficient or credible information to determine that he was a victim of human trafficking. *Id.* ¶¶ 45, 46. On June 12, 2026, D.A.G.M. remained classified as a Category 4, with no new potential sponsor identified. *Id.* ¶ 47. On June 16, 2026, ORR received a child advocate appointment form. *Id.* ¶ 48.

On July 9, 2026, D.A.G.M. remained classified as a Category 4, with no new potential sponsor identified. *Id.* ¶ 49. Throughout that month, D.A.G.M. attended all scheduled legal meetings with his NIJC attorney. *Id.* On July 10, 2026, D.A.G.M. attended his first child advocate meeting. *Id.* ¶ 50. The case manager met with D.A.G.M. for monthly case updates, and there continued to be no viable sponsor. Petitioner met weekly with his child advocate approximately five times throughout July and August 2026. *Id.*

On August 19, 2026, D.A.G.M. attended an immigration master calendar hearing before an immigration judges, with the next court hearing scheduled for August 26, 2026. *Id.* ¶ 53.

On August 21, 2026, D.A.G.M.'s purported brother reappeared and indicated his desire to re-open his application for sponsorship. Accordingly, an ORR case manager reached out to him. *Id.* ¶ 54. The case was assigned to a Division of Placement Operations (DPO) intakes analyst that evening. *Id.* On August 24, 2026, the agency again (unsuccessfully) attempted to contact the

potential sponsor by telephone. *Id.* ¶ 55. On August 25, 2026, agency contacted the potential sponsor, provided an orientation to him regarding the application process, and confirmed the potential sponsor's renewed interest. *Id.* ¶ 56. The potential sponsor provided his Guatemalan Consular identification, and the analyst informed him of the identification and Social Security Number or Individual Taxpayer Identification Number (SSN/ITIN) requirements. *Id.*

On August 26, 2026, the agency assisted the potential sponsor in completing the first section of the application. *Id.* ¶ 57. The potential sponsor completed the Authorization for Release of Information, and the agency informed him that he needed to add all household members to his application and submit the required identification, SSN/ITIN, proof of address, and proof of income. *Id.* The agency noted that the household members and any alternative caregivers needed to sign release-of-information forms, too. *Id.* On August 27, 2026, the agency spoke with the potential sponsor about missing documents and information in the application, and advised that the information release forms for the household members contained incomplete and incorrect information. *Id.* ¶ 58. The agency also received a pay stub from the potential sponsor, but it contained an address and social security number for him that were not disclosed on his information release form. *Id.* The potential sponsor told the agency that he would review it and call them back. *Id.*

On August 28 and 29, 2026, the agency checked the application, which the potential sponsor had not completed, including even signing the sponsor-care agreement. *Id.* ¶ 59. Pending documents include additional pay stubs, SSN or ITIN numbers for all adults, release forms for the household members, and appropriate identification for all adults. *Id.* The agency noted that the potential sponsor would need to amend his release form due to the additional address on his pay stub that he did not disclose in his previous application and explain why there is a social security

number on his pay stub when he previously indicated he had no such number. *Id.* The agency was unable to reach the potential sponsor by phone on August 29, 2026. *Id.*

On August 30, August 31, and September 1, 2026, the agency called and texted the potential sponsor to follow up on missing documents and the incomplete sponsor application. *Id.* ¶ 60. In addition, the agency called and texted the potential sponsor on September 1st to follow up on missing documents and the incomplete sponsorship application but was unable to leave a voicemail. *Id.* ¶ 61.

Argument

I. Administrative Exhaustion is Appropriate Here.

D.A.G.M.'s habeas action is untimely where, as here, their relevant sponsorship application 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"). This principle is particularly important here because D.A.G.M. is admittedly a minor and thus cannot simply be released on his own recognizance. 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 D.A.G.M.'s potential sponsor remains pending. *See* Biswas Decl. ¶ 61.

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. As detailed above, ORR is actively engaging with the D.A.G.M.'s potential sponsor and has informed him in multiple conversations of the required documents and information he must provide. *See generally* Biswas Decl. ¶¶ 54–61. Further, there is no allegation whatsoever that ORR is preventing anyone from completing outstanding sponsorship requirements. In fact, the record shows that once he expressed his desire to reopen his sponsorship application on August 21,2026, ORR called D.A.G.M.'s potential sponsor every weekday to assist him with his application. *Id.* ¶ ¶ 54–61. Every time the agency was able to reach him by phone, the agency reviewed with him each of the pending documents that were required. *Id.* ¶ 57; *see also 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 2–6. 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).

The fact that no application has even been completed here separates this case from other UAC habeas cases this court has seen. *See e.g. E.F.E.L. v. Noem*, No. 26 C 2507, 2026 WL 1045550, at *5–6 (N.D. Ill. Apr. 17, 2026) (Coleman, J.) (granting habeas in part because the petitioner had been turned over by ORR to the sponsor in the past but had to renew the sponsorship process after subsequent DHS encounter). There is thus little reason why exhaustion should not be required here.

II. ORR's Custody of D.A.G.M. 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." *Reno v. Flores*, 507 U.S. 292, 302 (1993). 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 D.A.G.M. entered the United States alone, without any parent or recognized guardian in the United States. Biswas Decl. ¶ 29. This means that ORR took custody of D.A.G.M. as a UAC and was thus subject to 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 children in its care on their own recognizance, or to just anyone who expresses a willingness (even

eagerness) 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 D.A.G.M.'s current potential sponsor has a pending application with ORR to take custody of him so that ORR can make a careful decision. Biswas Decl. ¶ 61. Instead of going the direct route contemplated under the statute and regulations, petitioner's counsel is attempting to short-circuit that process by going to district court and filing a habeas petition to have this court make its own "best interests" determination. But considering that the sponsorship application discussed above is far from complete, and that the potential sponsor has failed to submit required documents, ORR's actions in this matter have strictly followed the statutory requirements. As discussed above, ORR is prohibited from releasing D.A.G.M. 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 D.A.G.M. should not be released by judicial fiat.

III. ORR's Continued Care of Petitioner Does Not Violate Procedural Due Process.

Petitioner's first Claim argues that ORR's continued care of him constitutes a due process violation because he has a liberty interest under the Due Process Clause, asserting that respondents' policies and actions have deprived him of freedom from confinement without constitutionally sufficient due process. Pet. ¶¶ 95–101. D.A.G.M.'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). But even under that analysis, the

petitioner cannot demonstrate that the process that ORR provides for D.A.G.M. is lacking because ORR has helped and continues to help the sponsor through the process. Biswas Decl. ¶¶ 56–61 (listing outstanding elements of the pending sponsorship application). Next turn to the procedural due process analysis allegation that separation occurred here because the alleged brother could not submit the proper government issued documents. Pet. ¶¶ 110–15. In the only Supreme Court case dealing with UACs, the Court held that children such as D.A.G.M. have neither a substantive nor a procedural due process claim regardless of a *Mathews v. Eldridge*-balancing analysis. *See Flores*, 507 U.S. at 303–04, 308 (finding no right to an individualized hearing regarding whether a private placement would be in the child's "best interest," no substantive due process right to release, and that the procedural due process arguments were "just the 'substantive due process' arguments recast in 'procedural due process' terms."). In other words, "[i]nstitutional custody (despite the availability of responsible private custodians) is not unconstitutional in itself." *Flores*, 507 U.S. at 303–04. This is especially so where, as here, federal law *requires* that a child be placed in ORR's custody and may not be released to anyone else's custody unless and until ORR determines it may do so safely, and the integrity of the identity documents ensures that ORR only releases to the properly identified sponsors. 8 U.S.C. § 1232(c)(3). An argument that a sponsor should not have to identify themselves, or quarrel with the adequacy of such identification requirements, undermines the entire point of requiring that a sponsor actually prove their connection to the UAC. And that is especially true where there are multiple household members whom ORR has no information about.

Finally, and to the extent D.A.G.M. presses an amorphous interest in family unity, even parental rights, let alone rights to live with a sibling, can still yield to a government's interest in investigating situations that may give rise to neglect and abuse, as the law requires ORR to do.

See, e.g., 8 U.S.C. § 1232(c)(3)(A). Here a family unity right runs against the caution that the liberty protected by the Due Process Clause should not be "subtly transformed into the policy preferences of . . . [the] Court." *Reyna v. Hott*, No. 17-cv-1192, 2018 WL 3551558, at *4–5 (E.D. Va. Mar. 20, 2018). In this regard, "family unity" in the context of civil immigration detention "is an interest that . . . does not exist." *Reyna v. Hott*, 921 F.3d 204, 211 (4th Cir. 2019); *see also Aguilar v. ICE*, 510 F.3d 1, 21–23 (1st Cir. 2007) (similar); *M.O.G.R. v. Warden*, No. 25-cv-356, 2025 WL 3460936, at *5 (M.D. Ga. Dec. 2, 2025) (similar). And a large reason for ORR's vetting process's existence is to confirm that D.A.G.M.'s potential sponsor is *actually* a sibling.

In this regard, and 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 government'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").

Here, ORR has continuously worked with D.A.G.M.'s potential sponsor to help him fill out his sponsor application. Biswas Decl. ¶¶ 57–61. The potential sponsor's application for sponsorship is still incomplete, and as a result, ORR has not made a final decision whether it is safe to release petitioner to him. *Id.* ¶¶ 56-61.

D.A.G.M. has likewise not made any showing of unreasonable delay. The record demonstrates that D.A.G.M.'s potential sponsor initially expressed interest in pursuing sponsorship in October 2025 but informed the agency a month later that he no longer wished to proceed. Biswas Decl. ¶¶ 30–35. ORR cannot force anyone to be a sponsor. And when D.A.G.M.'s parents in his home country were presented with the options of LTFC or voluntary departure (which would have released him from ORR's custody), D.A.G.M. chose the former. *Id.* ¶ 36. ORR's efforts to identify another potential sponsor yielded no results. *Id.* ¶¶ 37–51. Once ORR reopened the sponsor application for D.A.G.M.'s purported brother on August 25, 2026, the agency called or texted him daily to assist with completing each part of the application. *Id.* ¶¶ 56–61. But between August 27th and September 2d, the potential sponsor made no progress on the application or in submitting the required information. *Id.* ¶¶ 58–61.

Critically, as another court has 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." *J.E.C.M. v. Marcos*, 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). Petitioner's arguments about due process are oblivious to this concern.

In sum, ORR has not violated D.A.G.M.'s procedural due process rights.

IV. Petitioner's TVPRA Claim Also Fails.

D.A.G.M. also asserts that ORR violated the TVPRA's requirement that he be placed in "the least restrictive setting that is in his best interests." Pet. ¶¶ 71–80. The first problem with this argument is that the TVPRA does not provide a standalone cause of action, and does not contain an express waiver of the government's sovereign immunity. *See* 8 U.S.C. § 1232; *Lane v. Pena*, 518 U.S. 187, 192 (1996); *cf. Adams v. Calhoun County*, 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. v. Azar*, No. 18-cv-5741, 2018 WL 7200716, at *7 n.12 (C.D. Cal. Dec. 27, 2018). 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 sponsor application for the current potential sponsor is incomplete and essential vetting requirements have not even begun. This means that ORR has not made a final agency decision regarding the suitability of the potential sponsor and the safety of releasing D.A.G.M. to him, which means judicial review of such a claim under the APA is not available. *See e.g., Dhakal v. Sessions*, 895 F.3d 532 (7th Cir. 2018) (final agency action is a necessary prerequisite for a viable APA claim); *see also* Biswas Decl. ¶¶ 54–61 (describing steps taken by ORR and the potential sponsor's necessary next steps).

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).[3] 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). 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). No such determination has been made for the simple reason that no application has ever been completed. Still, ORR is actively engaged with the potential sponsor, but that process is not yet complete. Biswas Decl. ¶ 61.

V. Petitioner's Fifth Amendment Equal Protection Claim Is Moot and, in Any Event, Fails on the Merits

A. Petitioner's Equal Protection Claim Is Moot.

Petitioner's Sixth Claim alleges that respondents violated the Fifth Amendment's equal protection component by refusing to permit D.A.G.M.'s brother to submit or pursue a sponsorship application because he lacked U.S.-issued identification. Pet. ¶¶ 110–15. Whatever a controversy may have existed concerning the potential sponsor's inability to apply for sponsorship of D.A.G.M., that alleged injury no longer exists.

Article III limits federal courts to adjudicating actual, ongoing cases or controversies. U.S. Const. art. III, § 2; *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477–78 (1990). A claim becomes moot when intervening circumstances eliminate the plaintiff's personal stake in the particular controversy such that the court can no longer grant meaningful relief directed to the alleged injury. *Id.*; *Brown v. Bartholomew Consol. Sch. Corp.,* 442 F.3d 588, 590–91 (7th Cir. 2006).

[3] Although the petition does not cite § 706(1), that is the section applicable to claims based on delay.

In this case, D.A.G.M. alleges that ORR prevented his purported brother from pursuing sponsorship because that person lacked U.S.-issued identification. Pet. ¶¶ 113–15. The first problem with that argument is that it is a grievance with how *someone else* (rather than the petitioner himself) is ostensibly not being treated equally enough. *Cf. Department of State v. Muñoz*, 144 S. Ct. 1812, 1825 (2024) (rejecting a plaintiff's Fifth Amendment claim that she had "a procedural due process right in *someone else's* legal proceeding" (emphasis in original)). The second problem is how the record establishes that this alleged barrier no longer prevents the potential sponsor from applying. As of August 25, 2026, ORR has initiated the application for the potential sponsor and assigned him an FFS who is assisting him in completing the application, collecting the required documents, and calling him on a daily basis to offer help and answer questions. Biswas Decl. ¶¶ 56–61. Thus, the potential sponsor is presently participating in the sponsorship process from which D.A.G.M. alleges he was previously excluded.

Nor does the voluntary cessation doctrine require a different result. A defendant generally cannot moot a case merely by temporarily discontinuing challenged conduct after litigation begins. *Friends of the Earth, Inc. v. Laidlaw Envt'l Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000); *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013). In this case, however, the record reflects more than a temporary suspension of the alleged conduct. ORR has opened this potential sponsor's application, assigned personnel to process it, assisted the potential sponsor with completing the application, and continues to seek the materials necessary to adjudicate it. Biswas Decl. ¶¶ 56–61. The alleged gatekeeping injury—the sponsor's purported inability to enter the sponsorship process because of his identification documents—is therefore no longer operative as to this petitioner and this potential sponsor.

For the same reason, the "capable of repetition, yet evading review" exception does not

apply. Petitioner must demonstrate a reasonable expectation that he personally will again be subjected to the same alleged action. *See Lewis*, 494 U.S. at 481. He cannot do so where the identified potential sponsor has already been permitted to undergo the sponsorship process and his application remains pending. Accordingly, to the extent D.A.G.M. seeks relief from the alleged refusal to permit his brother to pursue sponsorship, there is no longer a live controversy concerning that alleged injury, and the claim should be dismissed as moot.

B. ORR's Sponsor Identification Requirements Satisfy Rational Basis Review.

Even if this claim were not moot, it fails on the merits because the sponsor identification requirements discussed above easily satisfy rational basis review. Undocumented immigrants are not a "suspect class" under the Fifth Amendment. *Plyler v. Doe*, 457 U.S. 202 (1982). When no suspect class or fundamental right is involved, the court employs a rational basis test "to determine whether the legislative act is constitutional." *Lopez Ramos v. Barr*, 942 F.3d 376, 381 (7th Cir. 2019) (quoting *Eby-Brown Co., LLC v. Wis. Dep't. of Agric.*, 295 F.3d 749, 754 (7th Cir. 2002)). "Governmental action only fails rational basis scrutiny if no sound reason for the action can be hypothesized." *Lamers Dairy Inc. v. USDA*, 379 F.3d 466, 473 (7th Cir. 2004).

Under the TVPRA, Congress requires ORR to verify the potential sponsor's identity, relationship to the child, and any activity that could pose a risk to the child before release. 8 U.S.C. § 1232(c)(3)(A). ORR implements this obligation under its Foundational Rule, which requires identity verification, fingerprinting, DNA testing, background checks, and consultation with issuing authorities to confirm document validity. 45 C.F.R. § 410.1202(b)–(c). Those obligations serve compelling practical and safety concerns. ORR is determining whether to transfer physical custody of a vulnerable child to a particular individual. Reliable verification that the individual applying, submitting information, undergoing required checks, and ultimately receiving the child

is the person he or she claims to be bears an obvious relationship to ORR's responsibilities to protect children, prevent trafficking and exploitation, detect fraud, and ensure the integrity of sponsor suitability determinations. And rational basis review does not permit a court to invalidate a reasonable verification rule merely because D.A.G.M. believes ORR could employ a different, more lenient standard. And even if the court found that ORR's identification requirement did not satisfy a rational basis review, the appropriate relief would not be an order compelling D.A.G.M.'s release before ORR completes the required suitability assessment.

C. Petitioner's Comparison to Other Federal Programs Does Not Establish Irrationality.

Petitioner's principal argument for irrationality fares no better. He alleges that the federal government accepts foreign-issued identification in other immigration and tax contexts, including applications for temporary protected status, nonimmigrant visas, permanent residence, asylum, and individual taxpayer identification numbers. Pet. ¶ 114. From that premise, D.A.G.M. contends that ORR *must* accept the same types of documents when determining whether anyone off the street is suitable to take custody of any UAC. *Id.* That conclusion does not follow.

D.A.G.M.'s comparison to unrelated federal programs does not establish an equal protection violation. Equal protection requires like treatment of persons who are similarly situated under like circumstances. It does not require distinct federal programs, operating under different statutory schemes and serving materially different purposes, to employ identical procedures. *See Engquist v. Oregon Department of Agriculture*, 553 U.S. 591, 601–02 (2008); *Srail v. Village of Lisle*, 588 F.3d 940, 943–46 (7th Cir. 2009). Notably, applications for temporary protected status, visas, permanent residence, asylum, or taxpayer identification numbers are not handled by HHS, likely because they do not involve the same weighty determinations about children. As discussed above, ORR's decision making in this context concerns whether it is safe to transfer physical

custody of a UAC to a particular sponsor in this country. D.A.G.M. therefore cannot establish irrational differential treatment merely by alleging that other federal programs administered by other agencies about completely different concerns accept forms of identification that ORR allegedly does not.

The relevant question under rational-basis review is therefore not whether some other federal program accepts a particular foreign-issued document, but whether ORR could rationally conclude that its documentation requirements further reliable sponsor identification and the safe placement of unaccompanied alien children. They plainly do. *See* 8 U.S.C. § 1232(c)(3)(A); 45 C.F.R. § 410.1202(b)–(c).

For the foregoing reasons, D.A.G.M.'s equal protection claim should be dismissed as moot or, alternatively, denied on the merits.

Conclusion

For the reasons stated, the court should deny the petition for writ of habeas corpus.

Respectfully submitted,

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