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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

I.J.S., a minor; by and through Erica Santamaria, as Next Friend of Minors,

Petitioner,

v.

ANGIE SALAZAR, Acting Director of the Office of Refugee Resettlement; Federal Field Specialist, Office of Refugee Resettlement; Federal Field Specialist Supervisor, Office of Refugee Resettlement; ALEX J. ADAMS, Assistant Secretary of the Administration for Children and Families; and ROBERT F. KENNEDY, JR., Secretary of the U.S. Department of Health and Human Services,

Respondents.

No. 5:26-cv-05404-AJR

RESPONDENTS' ANSWER TO VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

[Declaration of Toby Biswas filed concurrently]

Honorable A. Joel Richlin
United States Magistrate Judge

I. INTRODUCTION AND SUMMARY OF ARGUMENTS

The minor Petitioner in this matter, I.J.S., 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 April 5, 2026. *See* Declaration of Toby Biswas ("Biswas Decl.") ¶ 31. M.E.S.N. is Petitioner's potential Category 1 (parent) sponsor. Biswas Decl. ¶ 33.

A. Administrative exhaustion is appropriate here.

Petitioner's habeas action is untimely where, as here, the sponsorship application for I.J.S. is still incomplete. Biswas Decl. ¶61. ORR has been working with M.E.S.N. on a continual basis since April 7, 2026 (the day after identifying M.E.S.N. and two days after I.J.S. was placed in ORR's care). Biswas Decl. ¶¶ 33, 37-74. Notably, M.E.S.N. is still working with ORR to complete the process and even identified a new adult member of the household who must be evaluated after filing this petition. Biswas Decl. ¶ 79.

A litigant must exhaust their administrative remedies (the sponsorship process) before seeking habeas corpus relief, and no exceptions apply.

B. Petitioner's assertion that ORR is not actively involved in working the Sponsorship process and is dilatory is demonstrably false.

ORR has been working with and in contact with M.E.S.N. repeatedly since April 7, 2026. Biswas Decl. ¶¶ 37 (April 7), 38 (April 9), 39 (April 10), 40 (April 13), 41 (April 16), 42 (April 17), 43 (April 20), 44 (April 21), 45 (April 22), 46 (April 23), 47 (April 24), 48 (April 27), 49 (May 6), 50 (May 12), 51 (May 14), 52 (May 27), 53 (May 28), 54 (June 4), 55 (June 9), 56 (June 10), 57 (June 23), 58 (July 5), 59 (July 8), 60 (July 13), 61 (July 21), 62 (July 27), 63 (July 28), 64 (August 5), 65 (August 7), 66 (August 17), 67 (August 18), 68 (August 25), 69 (August 31), 70 (September 2), 71 (September 14), 72 (September 16), 73 (September 21), and 74 (September 23).

C. The TVPRA is the wrong statue to seek relief under, thus Petitioner's TVPRA Claim (Count One) fails as a matter of law.

The Trafficking Victims Protection Reauthorization Act ("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. Any claim that ORR has violated the TVPRA must be evaluated under the Administrative Procedures Act. Even if asserted under the APA, such a claim would fail. An APA claim requires the agency to be required to take an action (release of I.J.S.) which ORR cannot do because Petitioner has not completed the Sponsorship application process.

D. ORR's custody of Petitioner is required by statute (Count One – alleged violation of the TVPRA).

As a matter of law ORR cannot simply release a child in its care on their own recognizance to anyone who is willing to sponsor them, even a parent, without following the sponsor assessment process. Petitioner is asking the Court to order release of I.J.S. in contravention of ORR's statutory priorities and mandated safeguards to make an affirmative determination that the proposed custodian is capable of providing for the child's physical and mental well-being. Petitioner misunderstands and misapplies the ninety-day rule.

E. Nothing about ORR's continued care for Petitioner violates the Fifth Amendment.

There is no violation of the substantive component of the Due Process Clause. The standard requires M.E.S.N.'s rights are not absolute, and to succeed the action causing the deprivation must fall so far beyond the outer limits of legitimate governmental action that no process could cure the deficiency and the governmental action must shock the conscience. In this case, M.E.S.N.'s failure to complete the Sponsorship Application Process is the issue.

There is no violation of the procedural component of the Due Process Clause. M.E.S.N.'s fundamental liberty interest in the care, custody, and control of their children does not outweigh the state's obligation to ensure the proposed custodian is capable of providing for a minor child's physical and mental health.

As discussed in more detailed below, the applicable suitability determination process needs to be followed to ensure M.E.S.N's safety and well-being. Having to establish unlawful custody, the Petition should be denied.

II. LEGAL FRAMEWORK OF ORR

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). 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.

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

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. § 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 prompt and continuous efforts on its part towards the 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 September 23, 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 September 23, 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 percent 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 (see 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. ¶ 18. Rather, ORR only takes children into 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. ¶ 18. 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. ¶ 19. 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. UACB Policy Guide § 2.2.1; Biswas Decl. ¶ 19. 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. UACB Policy Guide §§ 2.2.2, 2.4; Biswas Decl. ¶ 22.

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. ¶ 20. 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. ¶ 20.

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. ¶ 19, 22, 24, 25.

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. ¶ 24. 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. ¶ 24. ORR makes the final release decision. UACB Policy Guide § 2.7; Biswas Decl. ¶ 24. 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. ¶ 24. 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. ¶ 25; *see also* 45 C.F.R. § 410.1205 (Release decisions; denial of release to a sponsor).

F. The One, Big, Beautiful Bill Act ("OBBBA") 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. ¶ 21. These requirements ensure that ORR's obligation to undertake a full assessment of each potential sponsor's suitability is completed before ORR releases the child from its custody.

G. Appeals of ORR Decisions

If ORR denies the application of a parent, legal guardian, or close relative potential sponsor, the denied potential sponsor may appeal that decision through an administrative process. 45 C.F.R. § 410.1206. ORR policy requires that, if ORR denies the sponsor application of a parent, legal guardian, or close relative, the ORR Director, or their neutral and detached designee must send the potential sponsor a Notification of Denial Letter, after receiving all the required information and documentation in a specific case. *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.

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

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

III. FACTUAL AND PROCEDURAL BACKGROUND

A. The Sponsor Application Process is Not Complete Because Petitioner's Mother Has Failed to Submit the Required Documents and Complete all Actions Required of Her

As the potential sponsor, M.E.S.N. has not provided all the required documents or completed the sponsorship process (example: Proof of Address, M.E.S.N. apparently moved several times during the processing of I.J.S.'s case). Biswas Decl. ¶¶ 45, 61, 68, 79. Second, M.E.S.N. identified a new adult alternate caregiver (ACG) on September 21, 2026 and the required Authorization for Release of Information (ARI) for this new ACG is pending fingerprinting and background checks. Biswas Decl. ¶ 79 Investigation into the newly identified ACG is mandated by law. M.E.S.N.'s ability and/or willingness to complete the Sponsor Application Process is within the sole control of M.E.S.N., not ORR.

B. Inconsistent Communications from M.E.S.N.

Although not a basis itself, there is the contributing factor of difficulty communicating with M.E.S.N. Either M.E.S.N. is unable or unwilling to reliably respond to ORR's efforts to contact her via phone calls, text messages, and letters. Biswas Decl. ¶¶ 44 (phone not working), 45 (connectivity issues), 49 (no answer), 54 (no response to text), 55 (no response to text), 67 (no response), 71 (no answer, no response to text), 73 (no answer, no response to text). This is likely due to M.E.S.N.'s several changes of residence, but it does not explain M.E.S.N. falsely alleging that she "heard nothing about the application process" "for weeks." Petition ¶ 5. ORR has been extremely diligent and in contact with M.E.S.N. since less than forty-eight hours after I.J.S. was placed in their care. Biswas Decl. ¶¶ 37 (April 7), 38 (April 9), 39 (April 10), 40 (April 13), 41 (April 16), 42 (April 17), 43 (April 20), 44 (April 21), 45 (April 22), 46 (April 23), 47 (April 24), 48 (April 27), 49 (May 6), 50 (May 12), 51 (May 14), 52 (May 27), 53 (May 28), 54 (June 4), 55 (June 9), 56 (June 10), 57 (June 23), 58 (July 5), 59

(July 8), 60 (July 13), 61 (July 21), 62 (July 27), 63 (July 28), 64 (August 5), 65 (August 7), 66 (August 17), 67 (August 18), 68 (August 25), 69 (August 31), 70 (September 2), 71 (September 14), 72 (September 16), 73 (September 21), and 74 (September 23).

M.E.S.N.'s failures to communicate and complete the Sponsorship process is not something ORR can fix for her or work around. There is no "failure to communicate" exception to ORR's statutory mandate to evaluate a sponsors' ability to provide for the child's physical and mental well-being as well verifying all other adult members of the household and other caregivers as detailed above in Section II. Once completed and if granted, ORR will promptly make its final sponsor suitability determination on the Sponsor's application and release the Petitioner to her custody, if appropriate. Biswas Decl. ¶ 82.

IV. ARGUMENT

A. Administrative Exhaustion Is Appropriate Here

Petitioner's habeas action is untimely where, as here, the sponsorship application for I.J.S. 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, where 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) (superseded by statute for suits seeking only monetary damages); *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 I.J.S. remains pending and important vetting requirements (see Section II herein above) as well as for both M.E.S.N. and Adult Household Members ("HHM"s) and Adult Caregivers ("ACG"s) have not yet been completed.

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) (citing *Vaca v. Sipes*, 386 U.S. 171, 185 (1967)). Neither of these exceptions apply. ORR is actively engaging with the potential sponsor for M.E.S.N. and assisting her sponsorship process which remains ongoing. *See generally* Biswas Decl. ¶¶ 37- 74. Further, there are no allegations that ORR is preventing the potential sponsor for I.J.S. from completing outstanding sponsorship requirements; in fact, the record shows the opposite. *Id.; 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 4-6, 8-10. 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). Thus, exhaustion is required, and Petitioner has failed to do so.

B. The TVPRA is the Wrong Statue to Seek Relief Under, Thus Petitioner's TVPRA Claim (Count One) Fails as a Matter of Law

Petitioner asserts that ORR violated the TVPRA's requirement that I.J.S., as a UAC, "[t]he TVPRA provides that an unaccompanied child in ORR custody "*shall* be *promptly* placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)" Petition ¶ 74 (emphasis added in original). Petitioner misapplies the statue.

1. Without a waiver of sovereign immunity, the TVPRA claim fails.

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) ("A waiver … must be unequivocally expressed in statutory text, and will not be implied.") (internal citations omitted); *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 holding: The TVPRA's "…broad terms signal no intent to abrogate sovereign immunity—certainly not an 'unmistakably clear' congressional intent to do so.").

2. Agency action must be reviewed under the Administrative Procedures Act.

Accordingly, 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), any claim that ORR has violated the TVPRA must be evaluated under the Administrative Procedures Act ("APA") (5 U.S.C. § 706(2)(A)).

a. <u>There is no final agency action upon which to base an APA claim, thus such a claim would fail.</u>

Petitioner does not assert an APA claim, and even if Petitioner had done so, an

APA claim would fail. 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. ORR's preliminary sponsor vetting efforts are not reviewable. The sponsor application for M.E.S.N. as a potential sponsor of I.J.S. is being processed, essential vetting requirements are still pending, and ORR has not made its final agency decision regarding the suitability of the potential sponsor and the safety of releasing Petitioner to her. Thus, judicial review under the APA is not available.

What Petitioner is asking the Court to do is amend the plain text of § 704 and create a review process for pending and incomplete agency actions contrary to well established binding precedent as to what constitutes "final agency action". *See Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (To be "final," agency action must "mark the consummation of the agency's decisionmaking process," and "must be one by which rights or obligations have been determined, or from which legal consequences will flow.") (internal citations and quotation marks omitted).

b. Alleged withholding of, or unreasonable delay in, release are insufficient for an APA claim under the ORR statutory scheme when sponsor vetting is actively in process.

Beyond the final agency action roadblock to a claim, 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). 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) (Compelling agency action under the APA "empowers a court only to compel an agency to perform a ministerial or non-discretionary act, or to take action upon a matter, without directing how it shall act.") Accordingly, an agency's purported delay in acting cannot be unreasonable with respect

to action that is not required. *See id.* Here, the TVPRA mandates that ORR release a child only to a sponsor that ORR, in its child welfare experience and judgment, determines will safely care for the UAC. 8 U.S.C. § 1232(c)(3)(A). ORR is actively engaged with the potential sponsor, M.E.S.N., in the ongoing sponsorship process but has not yet made the determination whether the Petitioner may safely be released. Biswas Decl. ¶ 82. Upon receipt of the outstanding items, ORR will promptly make its final sponsor suitability determination and release decision. *Id.*

C. ORR's Custody of Petitioner Is Required by Statute (Count One – Alleged violation of the TVPRA)

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. ¶ 30. This means that ORR took custody of I.J.S. under the HSA. Biswas Decl. ¶ 31. 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), *see Martin*, 467 U.S. at 165.

As Petitioner correctly states, the TVPRA was designed to provide "special protections" for unaccompanied minors in light of their status as a "particularly

vulnerable group." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1178 (N.D. Cal. 2017). To effectuate that, 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). *see* also *Flores*, 862 F.3d at 876 (the "focus [is] on care and placement"). Paradoxically and inexplicably, Petitioner asks the Court to then order ORR to ignore that statutory priority and the mandated safeguards simply because M.E.S.N. says so.

As discussed above, the petition fails because I.J.S.'s potential sponsor, M.E.S.N., has a pending application with ORR to take custody of her so that ORR can make a considered decision of any kind. Biswas Decl. ¶¶ 77-82. Instead of utilizing 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 I.J.S. is currently in the sponsor-assessment process and could easily be completed with minimal effort by M.E.S.N., 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, M.E.S.N., unless and until ORR deems her (and her living conditions as well as the ACG now residing with her) suitable.[2]

Petitioner erroneously asserts that the inability of ORR to complete the process within ninety days mandates a court order compelling release without completion of the vetting process. Pet. ¶¶ 53-54. Beyond it contradicting the statutory obligations of ORR

[2] Petitioner asserts without basis that ORR is engaging in dilatory behavior. Pet. ¶ 26-28. To the contrary, ORR has continuously made documented efforts to assist M.E.S.N. with completing the vetting process. Biswas Decl. ¶¶ 37-74.

(see above), this misunderstands the nature of the ninety-day rule and what is required of ORR. "ORR reviews the cases of all pending sponsor applications for UACs in ORR custody for ninety days. The purpose of the review is to identify and resolve the reasons that a sponsor application remains pending in a timely manner. Upon completion of the review, case managers will update the sponsor and unaccompanied alien child on the status of the case, highlighting the reasons that the sponsorship process is incomplete. [T]he case manager will work with the sponsor, relevant stakeholders, and the ORR or Federal Field Specialist (FFS) on a plan to address portions of the application that remain incomplete…" UACB Policy Guide, §2.7.9, available at: https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2#2.7.9 (Rev. August 8, 2025). Cases that are not resolved after the initial ninety-day review period, are provided with additional ninety-day periods until the pending sponsor application is resolved in accordance with ORR policy. *Id.*; *see also* 45 C.F.R. § 410.1207.

Lastly, Petitioner then bootstraps the misstated and misunderstood ninety-day rule into an assertion that the alleged emotional harm suffered by I.J.S. by not being released to M.E.S.N. compels release. Pet. ¶¶ 54, 57, 58. In support, Petitioner cites to *I.R.L.M. v. Salazar et al.*, 2026 WL 2597933, at *9 (C.D.Cal., 2026), stating: "this Court agreed that continued separation between a petitioner and his mother 'ignores TVPRA's mandate that the child be placed promptly into the least restrictive setting that is in the best interest of the child, and also ignores the extreme hardship and emotional harm being inflicted on Petitioner…'". *I.R.L.M. v. Salazar* contains no language holding that alleged emotional harm ("continued separation") constitutes an exception to the statutorily mandated evaluation of sponsors or excuse the submission of the required documents. *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").

To the extent Petitioner is trying to make an argument that alleged non-compliance with the ninety-day rule is a failure by ORR to timely process the application of M.E.S.N. (i.e. a failure to follow its own rules), such an argument likewise lacks merit for two bases. As to alleged non-compliance: Petitioner does not specifically assert a claim under the *Accardi* doctrine, but makes *Accardi* doctrine arguments. Pet. ¶¶ 54, 57, 58. 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). First, any such claim would first fail because the remedy for an *Accardi* violation would be "limited to compelling the agency to abide by" the regulation (which ORR has done here), "not release". *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 227 n.44 (D.D.C. 2020). Not every agency regulation or procedure falls under the *Accardi* doctrine. To state a claim for an *Accardi* violation, a party must plausibly allege that a regulation or procedure "regulate[s] the rights and interests of others" and thus is "controlling upon the agency." *Leslie*, 611 F.3d at 175 (*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 the sponsorship application. 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. ¶¶ 46, 53) refers to adjudication of a "completed" sponsorship application. The pending application for the potential sponsor of I.J.S. is not yet complete, and important vetting requirements remain pending. Biswas Decl. ¶¶ 77-82.

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

1. Substantive due process (Count Two).

In Count Two, Petitioner asserts a violation of the substantive component of the Due Process Clause, arguing that ORR's continued care infringes on her and her mother's liberty interest in family integrity and association. Pet. ¶¶ 60, 81-82. "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).

As discussed above, any constitutional liberty interest that the Petitioners' parent has in raising her is "neither absolute nor unqualified," and ORR has compelling countervailing interests in protecting 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 to contest ORR's release decisions.

"There are two independent strands of substantive due process doctrine: The first prevents the government from engaging in conduct that 'shocks the conscience,' and the second prohibits the government from interfering with 'fundamental' rights, no matter

the process used, unless the government shows that such interference is narrowly tailored to serve a compelling state interest". *JECM*, 352 F.Supp.3d at 586. (internal citations omitted).

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).

Petitioner cannot make these requisite showings here. In this case, where the vetting requirements for the potential sponsor for I.J.S. are still pending (*see* Biswas Decl. ¶¶ 77-82) and ORR has actively assisted the Petitioner's potential sponsor in completing sponsorship requirements (*see generally* Biswas Decl. ¶¶ 37-74), 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 lacks merit.

2. Procedural due process (Count Three).

In Count Three, Petitioner asserts a violation of the procedural component of the Due Process Clause, arguing that she "has been erroneously deprived of her liberty due to ORR's failure to timely adjudicate her sponsorship application, much less even provide a timeline for completion of 'essential tasks.' This lack of any decision also prohibits Petitioner's sponsor from availing herself of ORR's own internal appeal

process should her FRP theoretically be denied." Pet. ¶¶ 88, 90.

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. Petitioner's liberty interest (Pet. ¶¶ 88, 90) does not outweigh the remaining *Mathews* factors under the circumstances of these cases where the sponsorship application for I.J.S. remains pending, and the potential sponsor has yet to complete essential vetting requirements. Biswas Decl. ¶ 72. Moreover, ORR is actively assisting the current potential sponsor, M.E.S.N., in completing them.[3] *See generally* Biswas Decl. ¶ 37-74.

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

[3] In accordance with the ORR policy, "ORR reviews the cases of all pending sponsor applications for UACs in ORR custody for ninety days. The purpose of the review is to identify and resolve the reasons that a sponsor application remains pending in a timely manner. Upon completion of the review, case managers will update the sponsor and unaccompanied alien child on the status of the case, highlighting the reasons that the sponsorship process is incomplete. [T]he case manager will work with the sponsor, relevant stakeholders, and the ORR or Federal Field Specialist (FFS) on a plan to address portions of the application that remain incomplete…" UACB Policy Guide, §2.7.9, available at: https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2#2.7.9 (Rev. August 8, 2025). Cases that are not resolved after the initial ninety-day review period, are provided with additional ninety-day periods until the pending sponsor application is resolved in accordance with ORR policy. *Id.*; *see also* 45 C.F.R. § 410.1207.

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).[4] The court found that ORR's then-existing hearing policies that at the time applied only to UACs 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.[5] The court only added that the notice must inform denied potential sponsors that they are entitled to be represented by counsel (at no cost to the Government). *Id.* Notably absent from the *Lucas R* court's reasoning, however, was any mention of a requirement that due process demands a predetermination hearing before a sponsorship decision is ever made. *Id.* Here, the sponsorship application for the potential sponsor for each child Petitioner is still pending, and ORR has not made a final decision whether it is safe to release Petitioner to M.E.S.N. Biswas Decl. ¶¶ 75-76, 77-82.

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

[4] Petitioners misleadingly cite 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. ¶ 74. 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.

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

children in its care." 689 F.Supp.3d at 199 (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 UACs where children released by ORR across the country had taken dangerous jobs in factories, which had in some cases been encouraged or even required by sponsors). In sum, an application of the *Mathews* factors to the specific circumstances of Petitioners' cases demonstrates that ORR has not violated her potential sponsor's procedural due process rights.

V. CONCLUSION

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

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Respectfully submitted,

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