UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DIEGO N., *et al.*, Plaintiffs, v. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*, Defendants.	No. 1:26-cv-577-CJN

DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

There is no "policy" regarding what happens when unaccompanied alien children ("UAC") are re-referred to the custody of the U.S. Department of Health and Human Services' ("HHS's") Office of Refugee Resettlement ("ORR"). Instead, HHS abides by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), wherein Congress imposes on HHS a paramount obligation to "establish policies and programs to ensure that unaccompanied alien children in the United States are protected from traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity . . . ." 8 U.S.C. § 1232(c)(1). As the agency entrusted with the responsibility for caring for the thousands of UAC under the Homeland Security Act of 2002, 6 U.S.C. § 279, ORR must balance its obligation to protect UAC from human trafficking and exploitation, with promptly reunifying UAC, where possible, with their parents or other suitable sponsors. 8 U.S.C. § 1232(c)(2)(A). Thus, ORR has no authority to refuse a re-referral when the referring federal agency transfers custody of an individual determined to be a UAC. This means that a re-referred UAC is treated the same as a UAC who is encountered by ORR for the first time. ORR applies the same release requirements to all UAC in its custody, including the named Plaintiffs in this litigation.

While the four named Plaintiffs may be frustrated with their return to ORR custody, that does not mean that there is an ORR "reapplication policy," let alone a policy that endeavors to harm re-referred UAC, but rather the complete opposite. ORR must ensure that each sponsor is properly vetted, particularly when *new sponsors* seek to care for re-referred UAC instead of sponsors who were previously approved. Indeed, Plaintiffs' case rests on two flawed assumptions. The first is that all previously vetted sponsors will continue to act as the sponsors for UAC who

have been re-referred to ORR custody. However, two of the four named Plaintiffs in this case disprove this assumption as completely new sponsors have sought to become their guardians at some stage in the process. The second flawed assumption is that time has stood still since the UAC were released to their previously vetted sponsors. However, ORR must take all *current* information into account, to include assessing previously vetted sponsors anew and even assessing the circumstances of the re-referral. ORR "may consider danger to self, danger to the community, and risk of flight" in making placement decisions, thus, the circumstances of the re-referral may be relevant. *See* 8 U.S.C. § 1232(c)(2)(A).

And while Plaintiffs may also be frustrated with the fact that their re-referral means that they must spend additional time in ORR custody, it is not without reason. Safe and timely release involves several steps, including: the identification of sponsors; the sponsor application; interviews; the assessment (evaluation) of sponsor suitability, including verification of the sponsor's identity and relationship to the UAC (if any), background checks, and in some cases home studies; and post-release planning. Finally, while Plaintiffs may seek to enjoin ORR's Congressionally mandatory framework regarding the release of UACs, Plaintiffs are not entitled to such relief simply because they are re-referred UACs. Giving ORR the time necessary to ensure that it can safely assess the sponsorship placements for all UAC in its care, as required by Congress, is in the interests of *both* re-referred UAC and ORR alike. And this Court should not interfere and create new requirements for ORR when there is no showing that ORR's actions violate either due process or the APA.

For these reasons, Plaintiffs' preliminary injunction must fail.

BACKGROUND

I. Statutory and Regulatory Background

The legal framework governing the federal care and custody of UAC establishes that anytime UAC are referred to ORR, the agency must consider the child's current circumstances and verify the potential sponsor's present suitability prior to release. UAC "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." 8 U.S.C. § 1232(c)(3)(A) (emphasis added). ORR must conduct certain steps, including background and criminal records checks, "[i]n all cases." 45 C.F.R. § 410.1202(b)–(c). And ORR must consider the UAC's "*current* functioning and strengths in conjunction with any risks or concerns." 45 C.F.R. § 410.1202(f) (emphasis added). The legal framework balances the mandate that ORR protect UAC from harm with the requirement that ORR "promptly" place UAC "in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A).

A. Statutory Framework

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 UAC 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 UAC. 6 U.S.C. § 279(b)(1)(A) & (b)(2)(A)(ii). These responsibilities are carried out through cooperative agreements and contracts with care providers under ORR policies and oversight. *See* 6 U.S.C. § 279(b)(1); 31 U.S.C. § 6305.

Congress enacted the Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA") in 2008 to strengthen protections for UAC and support their safe repatriation or appropriate placement. Pub. L. No. 110-457. The statute, consistent with the HSA, makes the Secretary of HHS responsible for the care and custody of UAC. 8 U.S.C. § 1232(b)(1). Pursuant to the TVPRA, "any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child." 8 U.S.C. § 1232(b)(3). ORR has no authority to refuse a referral when the referring federal agency transfers custody of an individual that the other agency has determined to be a UAC. Declaration of Toby Biswas, dated March 10, 2026, Ex. 1 ("Biswas Decl.") ¶¶ 8–9.

The TVPRA also states that HHS, and other agencies, "shall establish policies and programs to ensure that unaccompanied alien children in the United States are protected from traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity." 8 U.S.C. § 1232(c)(1). It also provides that UAC "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." 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.* Thus, the TVPRA is explicit that ORR must prioritize the safety and well-being of UAC while in its care and upon release.

B. The Unaccompanied Children Program Foundational Rule (2024)

In April 2024, ORR promulgated the Unaccompanied Children Program Foundational Rule, codified at 45 C.F.R. Part 410, to establish comprehensive regulations governing its UAC program consistent with its statutory responsibilities. The Foundational Rule also implements provisions of the *Flores* Settlement Agreement ("FSA") relevant to ORR's care and custody of UAC and conditionally and partially terminated the FSA as to ORR in June 2024.[1] Biswas Decl. ¶ 13 & n.2. Effective July 1, 2024, the Foundational Rule codified in regulation standards and practices that were previously described in ORR policies.

Specifically, the 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

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

child." *Id.* § 410.1202(b). ORR also verifies "the employment, income, or other information provided by the potential sponsor as evidence of the ability to support the child," *id.* § 410.1202(c), and "[i]n all cases, ORR shall require background and criminal records checks," which may include a criminal history check based on fingerprints, *id.* The Rule reinforces congressional intent articulated in the HSA and TVPRA that HHS ensure UAC protection from human traffickers and release UAC only to those sponsors capable of protecting their well-being. 45 C.F.R. § 410.1003; *see* Biswas Decl. ¶¶ 10–11.

Moreover, the Rule requires ORR to consider the UAC's "*current* functioning and strengths in conjunction with any risks or concerns," including history or risk of being a victim of sex or labor trafficking and history of involvement in the criminal or juvenile justice system. 45 C.F.R. § 410.1202(f) (emphasis added).

C. ORR's Release Policies and Practices

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 UACB Bureau Policy Guide ("UACB Policy Guide"). *See* UACB Policy Guide, *available at* https://perma.cc/Q2C3-3SC5 (last visited March 4, 2026); *see also* Biswas Decl. ¶¶ 16–21 (discussing the relevant UACB Policy Guide Sections). 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. ¶ 15. Rather, ORR only takes children into its custody upon referral by another federal agency, as described in 8 U.S.C. § 1232(b). *Id.* ¶¶ 7–9. In this regard, ORR is also very different

from state child welfare agencies, which typically retain such authority post-placement. *Id.* ¶ 15. 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. There are four 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; (3) Category 3, consisting of other sponsors, such as distant relatives, unrelated adult individuals, or an institutional/organizational sponsor; (4) Category 4: no sponsor identified.. *Id.* § 2.2.1. ORR conducts suitability assessments of any potential sponsor (with the assistance of a care provider), including a review of the potential sponsor's strengths, resources, risk factors, and special concerns within the context of each child's needs, strengths, risk factors, and relationship to the sponsor. *Id.* §§ 2.2.2, 2.4.

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 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. 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. 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.

Once the assessment of the potential sponsor is complete, the care provider makes a release recommendation. *Id.* § 2.7. ORR makes the final release decision. *Id.* Release decisions include: (1) approve release to sponsor; (2) approve release with post-release services; (3) conduct a home study before a final release decision; (4) deny release; or (5) remand for further information. *Id.* ORR denies release if: (1) the potential sponsor is not willing or able to provide for the child's physical or mental well-being; (2) the potential sponsor is not willing to complete the mandatory fingerprint check; (3) the physical environment of the home presents a risk to the child's safety or well-being; or (4) release of the UAC would present a risk to him or herself, the sponsor, household, or community. *Id.* § 2.7.4. If ORR denies the application of a parent, legal guardian, or close relative potential sponsor, the denied potential sponsor may appeal that decision through a detailed administrative process. 45 C.F.R. § 410.1206; *see* Biswas Decl. ¶ 34.

D. Concerns About ORR's Prior Sponsor Vetting Process (2022-24)

In December 2022, the Permanent Subcommittee on Investigations within the U.S. Senate Committee on Homeland Security and Governmental Affairs ("the Subcommittee") published a report detailing the inadequate treatment of UAC in federal care and the insufficient safeguards to ensure they are not trafficked or abused following their release. Biswas Decl. ¶ 20. The Subcommittee 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. *Id.* The Subcommittee specifically recommended that ORR enhance its procedures for verifying pre-existing

relationships and develop formal guidance for case managers during the verification process. *Id.* The Subcommittee also 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 will prohibit further consideration of the release of a child into their custody. *Id.*

In March 2023 ORR established an Integrity & Accountability ("I&A") Team to detect and prevent fraud. Biswas Decl. ¶ 18. The I&A Team identified several instances of fraudulent sponsorship applications, document falsifications, and patterns of human trafficking and exploitation. *Id*. For instance, the I&A Team identified 10 UAC who were released to sponsors who committed intentional document fraud in October 2024. *Id.*

In one particularly egregious case, the I&A Team found that a woman and her partner attempted to sponsor a total of 15 UAC over a five-year period by using multiple aliases. *Id.* ¶ 19. The woman used various aliases to attempt to sponsor eight UAC over the same period, with four UAC being released to her and four unsuccessful attempts to sponsor other UAC. *Id.* The aliases were only discovered when the sponsor underwent fingerprinting. *Id.* Of the four unsuccessful sponsorships, three were Category 1 cases, and one was a Category 2A case. *Id.*

In February 2024, the HHS Office of Inspector General published its finding in *Gaps in Sponsor Screening and Follow-Up Raise Safety Concerns for Unaccompanied Children* that:

1. In 16% of children's case files, one or more required sponsor safety checks lacked any documentation indicating that the checks were conducted.
2. For 19% of children who were released to sponsors with pending Federal Bureau of Investigation fingerprint or State child abuse and neglect registry checks, children's case files were never updated with the results.
3. In 35% of children's case files, sponsor-submitted identification documents contained legibility concerns.
4. ORR failed to conduct mandatory home studies in two cases and four other cases raise concerns about whether ORR guidance on discretionary home studies should offer more specificity.
5. In 5% of cases, sponsor records within ORR's case management system were not updated with child welfare outcomes or sponsorship history.

Biswas Decl. ¶ 21, Ex. A, February 2024 HHS OIG Report (*also available at* https://perma.cc/2GSC-YTAJ) (last visited March 7, 2026).

E. Updated ORR Guidance Regarding UAC Sponsor Vetting (2025)

Upon his inauguration, President Trump ordered HHS, along with DOJ and DHS, to take "all appropriate action to stop the trafficking and smuggling of alien children into the United States[.]" Executive Order 14159, "*Protecting the American People Against Invasion*," 90 Fed. Reg. 8443, at 8447 (Jan. 20, 2025). Shortly thereafter, former Acting Director of ORR Mellissa Harper issued a memorandum outlining immediate changes to address ongoing concerns with gaps in ORR's sponsor vetting process, as well as fraud and trafficking. Biswas Decl. ¶ 23, Ex. B, February 2025 Harper Memorandum.

On February 14, 2025, ORR issued Field Guidance 26, which requires all potential sponsors, their adult household members aged 18 and above, and all adult caregivers identified in a Sponsor Care Plan to undergo national fingerprint-based FBI background checks. *Id.* ¶ 25. Field Guidance 26 also requires the use of only unexpired and legible photocopies or high-resolution digital scans/photos of identification documents to establish identity. *Id.* These updates to the guidance for vetting potential sponsors directly support ORR's efforts to combat sponsor fraud and mitigate risk of human trafficking of UAC by: requiring the same identity document be used as part of the sponsorship application, the fingerprint application, and at discharge; ensuring validation of acceptable identity documents; and re-establishing universal FBI fingerprints for all sponsors. *Id.*

To further address identified gaps in the sponsor vetting process, ORR updated its UACB Policy Guide Sections 2.2.4 (concerning required supporting documents for sponsor applications to include unexpired identity documents and proof of income), 2.7.4 (concerning lack of

fingerprinting and proof of income as bases for denial of release requests), and 5.8.2 (concerning fraud reporting). Biswas Decl. ¶¶ 26, 29, Ex. C, March 2025 ORR Decision, Ex. D, April 2025 ORR Decision. As to identity documents, ORR made these updates to align the acceptable identity documents for identity verification purposes with the standards used for I-9 verifications as a safer framework than reliance on foreign-issued identity documents. Biswas Decl. ¶ 26. ORR has encountered difficulties authenticating foreign-issued documents and is aware of widespread fraud involving the use of such documents. *Id.* ¶ 27. In consideration of family reunification, the policies contemplate an exception for Category 1 sponsors on a case-by-case basis. *Id*.

With regard to proof of address documentation (UACB Policy Guide § 2.2.4), ORR has previously released children to addresses that did not include apartment numbers or were themselves suspected to be fraudulent, resulting in children released to locations that may not have been actual residences or for which the specific residential unit is unknown. Biswas Decl. ¶ 27. As to sponsor denial criteria (UACB Policy Guide § 2.7.4), ORR clarified that a sponsor's or adult household member's refusal to present for fingerprinting would be sufficient for denial of release because failure to present can be an indication that the individual is trying to conceal known biometrics or criminal history, which could be grounds for sponsorship denial. *Id.* And with respect to income verification, in the state child welfare system, parents, legal guardians, and close kin must demonstrate their financial capability to support a child's needs if the child is returned to their care. *Id.* ¶ 29. By requiring the submission of proof of income information and supporting documentation, case managers will be better equipped to identify potential indicators of labor exploitation. *Id.* ORR has identified instances where parents and other family members have been subjected to human trafficking and/or labor exploitation and had similar debts as the children they sponsored. *Id.*

F. Return of Previously Released UAC to ORR Custody

Prior to February of 2025, it was extremely rare for a federal agency to re-refer UAC to ORR after the UAC had previously been in ORR custody and released to a sponsor. *See* Declaration of Alexa L. Sendukas ¶ 5, ECF No. 4-8; *see* Declaration of Marion Donovan-Kaloust ¶ 4, ECF No. 4-9. The HSA, the TVPRA, and the Foundational Rule do not provide different procedures for UAC who are re-referred to ORR after previously being in ORR custody and released to a sponsor. ORR currently does not have a re-referral policy for children who are referred again to ORR by DHS after a previous release. Biswas Decl. ¶ 37.

Because the re-referrals began to happen more frequently in the last year, ORR is in the process of reviewing cases of children apprehended in the interior United States who had previously been in the custody of a parent or legal guardian in the United States and where that same parent or legal guardian is again seeking to sponsor the child. *Id*. ¶ 38. ORR requires background checks of all sponsors including sponsors of children re-referred to custody. *Id*. ORR will determine as part of this review of re-referred cases, whether the results of these background checks reveal the parent or legal guardian may be unfit or a danger to the child, such that additional vetting may be required in line with ORR's process for vetting new sponsors. *Id*.

II. This Lawsuit

Plaintiffs initiated this lawsuit on February 23, 2026, by filing their Complaint for Declaratory and Injunctive Relief, Complaint ("Compl."), ECF No. 1. In their Complaint, Plaintiffs allege that they are UAC who "were previously in ORR custody, determined to be eligible for release, and released to a suitable sponsor who was vetted and approved by ORR pursuant to the TVPRA." *Id.* ¶ 8. Plaintiffs assert that, after they were released from ORR custody, DHS detained them and re-referred them to ORR. *Id.* According to Plaintiffs, ORR has required

them "and their previously approved sponsors to recommence the sponsorship application process as if there was no prior sponsor approval decision." *Id.* Plaintiffs contend that ORR has a "blanket policy of requiring all previously approved sponsors to reapply for sponsorship." *Id.* Plaintiffs argue that "ORR applies this blanket policy to all children and does not make any individualized determination that the child was re-referred to ORR because of any concern related to the child's safety or wellbeing." *Id.* ¶ 35. Plaintiffs do not allege when ORR supposedly adopted this policy. Plaintiffs also do not identify any document or regulatory action taken to adopt the alleged policy.

Plaintiffs allege that "prior to 2025, it was uncommon for a child to re-enter ORR custody after being released to a vetted and approved sponsor." *Id.* ¶ 33. Plaintiffs contend that DHS has apprehended and re-referred them to ORR for "many different reasons that do not necessarily implicate sponsor suitability." *Id.* ¶ 50. Plaintiffs assert that UAC's average length of time in ORR custody has increased since ORR implemented additional sponsorship application requirements in 2025. *Id.* ¶ 37.

The named Plaintiffs seek to represent a class of:

> noncitizen minors who are or will be in the custody of HHS and (1) who were previously in ORR custody, (2) who were approved for release by ORR to a sponsor, (3) who have been or will be re-detained by DHS and re-referred to ORR, and (4) whom ORR has not released to their previously approved sponsor pursuant to ORR's policy requiring the previously approved sponsor to submit a new sponsor application and obtain a new approval for release.
>
> *Id.* ¶¶ 9, 80.

Plaintiffs bring three causes of action. In Count I, Plaintiffs allege that ORR's purported reapplication policy deprives Plaintiffs of liberty without procedural due process in violation of the U.S. Constitution's Fifth Amendment. *Id.* ¶¶ 87–92. In Count II, Plaintiffs contend that ORR's purported reapplication policy is contrary to law and beyond statutory authority in violation of the

APA. *Id.* ¶¶ 93–92. In Count III, Plaintiffs assert that ORR's purported reapplication policy is arbitrary and capricious in violation of the APA. *Id.* ¶¶ 102–07.

Plaintiffs moved for a preliminary injunction and requested provisional class certification on February 24, 2026. Pls.' Mot. for Prelim. Inj., ("Mot."), ECF No. 10. Plaintiffs ask the Court to preliminarily enjoin the alleged "reapplication policy" and to require ORR to conduct two new administrative processes. Proposed Order, ECF No. 10-2. First, Plaintiffs request that ORR be ordered "to make an individualized determination within 72 hours of the class member's re-referral to ORR" as to whether material changed circumstances justify reconsidering the "prior sponsor approval decision." *Id.* at 2. Second, Plaintiffs ask the Court to require ORR to provide all class members "with a hearing before a neutral and detached decisionmaker within seven (7) days of the class member's re-referral to ORR custody or within seven (7) days of this order if the class member is already in custody." *Id.* At these new administrative hearings, ORR would bear the burden of proof by clear and convincing evidence to show that the prior sponsor "is not capable of providing for the child's physical and mental well-being." *Id.* at 3. Plaintiffs propose detailed procedural requirements for the new hearings. *Id.* at 2–4.

III. The Named Plaintiffs

Plaintiffs are four UAC: Diego N., Renesme R., Mario C., and Benito S. *See generally* Compl.

Diego N. As of February 18, 2026, Diego N. was 14 years old. Declaration of Diego N., ECF No. 4-4 ¶ 2. Diego N. is in ORR custody at a shelter in [redacted] Compl., ¶ 10; Biswas Decl. ¶ 45. ORR previously released Diego N. to his father Alexis N. in October 2024. Compl., ¶¶ 10, 60; Biswas Decl. ¶ 45. On November 6, 2025, U.S. Customs and Border Protection ("CBP") in DHS detained Diego N. and re-referred him to ORR. Compl., ¶¶ 10, 61–62. At the time of his encounter

with CBP, Diego N. admitted to being a scout for alien smuggling, but he later denied making that statement to ORR staff. Biswas Decl. ¶ 45.

Alexis N. has applied to sponsor Diego N. again, and as of March 4, 2026, ORR has not issued him a denial. Compl., ¶¶ 63–64; Biswas Decl. ¶ 45. Alexis N. uploaded the sponsor application and submitted his birth certificate and fingerprints. *Id*. On December 17, 2025, ORR commenced a home study due to Diego N.'s criminal history, his history of controlled substance uses and inappropriate contact with an adult while in his father's care, and history of making gang-related comments and drawings while in ORR care. *Id*. The home study focused on all aspects of Diego N.'s home, and was essential to assess whether concerning behavioral or safety concerns stemmed from Diego N.'s home life. *Id.* Additionally, in Diego N's case, the caseworker conducted family counselling sessions to ensure that his father would be better equipped to care for Diego N. *Id.* On December 30, 2025, ORR completed Diego N.'s home study, and a positive recommendation was made. *Id*. On January 18, 2026, ICE informed ORR that Diego N.'s case has been administratively closed and that ORR may proceed with standard release. *Id*. On January 29, 2026, ORR informed Alexis N. that his DNA appointment, identity verification, and additional vetting were still pending. *Id*. On February 6, 2026, Alexis N. was cleared on his internet criminal and sex abuse checks. *Id*. On February 24, 2026, ORR informed Alexis N. of the requirement to provide his taxpayer identification number/social security number and that the scheduling of his DNA appointment is still pending. *Id*.

Renesme R. As of February 17, 2026, Renesme R. was 16 years old. Declaration of Renesme R., ECF No. 4-5 ¶2. Renesme R. is in ORR custody at a shelter in [redacted] Compl., ¶ 11; Biswas Decl. ¶ 46. ORR previously released her to her father Michael R. in December 2023. *Id.* ¶¶ 11, 67; Biswas Decl. ¶ 46. DHS detained Renesme R. in November 2025 as Renesme was

traveling with a male friend during an ongoing DHS immigration enforcement operation and DHS re-referred her to ORR care on November 9, 2025. Biswas Decl. ¶ 46. Michael R. initially did not apply to sponsor Renesme R. again. Biswas Decl. ¶ 46; ECF No. 4-5. ¶¶ 11, 70.

On November 9, 2025, the same day Renesme was re-referred to ORR care, ORR contacted Renesme R.'s potential sponsor, her paternal aunt, and she agreed to commence the family reunification process. Biswas Decl. ¶ 46. On December 22, 2025, ORR contacted Renesme R.'s aunt to request the required documents and information for the sponsorship application. *Id*. On January 13, 2026, ORR informed Renesme R. that her aunt completed the sponsorship application, but they were still waiting for her to submit proof of her address and income, her fingerprinting and home study results were still pending, and they needed in-person verification of her identity documents. *Id*. On February 3, 2026, Renesme R. was informed again that those outstanding items were still pending. *Id*. On February 26, 2026, Renesme's aunt informed ORR that she would be withdrawing her sponsorship application and that Renesme R.'s father would instead move forward as her sponsor. *Id*. On March 2, 2026, Renesme R's aunt's sponsorship withdrawal was recommended by her ORR case manager and ORR proceeded to commence the sponsorship process with her father with his agreement. *Id*. As of March 4, 2026, ORR has not issued a denial of sponsorship to Michael R. *Id*.

Mario C. As of February 10, 2026, Mario C. was 17 years old. Declaration of Mario C., ECF No. 4-6 ¶2. Mario C. is in ORR custody at a shelter in [redacted]. Compl., ¶ 12; Biswas Decl. ¶ 47. ORR previously released Mario C. to his mother Marisol C. in December 2023. *Id.* ¶¶ 12, 71. On November 17, 2025, Mario C. was cited for theft (stolen vehicle). Biswas Decl. ¶ 47. ICE then referred Mario C. to ORR on November 24, 2025, and he was admitted to ORR care for a second time on November 25, 2025. *Id.*

On November 26, 2026, ORR made initial contact with Mario C.'s potential sponsor, his mother, to discuss the reunification process. *Id.* Between November of 2025 and February of 2026, ORR had several conversations with Mario C.'s mother about sponsorship. *Id.* During each conversation, Mario C.'s mother declined to sponsor Mario C. Mario C. was informed that his mother confirmed her interest in sponsorship but had declined sponsorship due to the requirements. *Id.*; *see* Compl., ¶¶ 12-15, 73.

On February 23, 2026, Mario C.'s mother identified a new sponsor who she alleged was her third cousin, and provided his name and phone number to ORR on February 24, 2026. *Id*. It was later learned that the third cousin is not related at all, and, was instead, a family friend. *Id*. The lack of familial relationship was confirmed by both the sponsor and Mario's mother. *Id*. Mario's mother was contacted on March 5, 2026, to revisit sponsorship and the reunification process was discussed. *Id*. Mario's mother confirmed interest in proceeding and her birth certificate and identification were submitted for authentication. *Id*. No denial has been issued for any sponsor application for Mario C. as of March 6, 2026. *Id*.

Benito S. As of February 20, 2026, Benito S. was 17 years old. Declaration of Benito S., ECF No. 4-7 ¶ 2; Biswas Decl. ¶ 48. Benito S. is currently placed at [redacted] Biswas Decl. ¶ 48. ORR previously released Benito S. to his aunt in August 2023. *Id*. He was admitted to ORR care for a second time on December 18, 2025, after local law enforcement cited him for driving without a license and following too close. *Id*. ICE was contacted to verify Benito S.'s immigration status. *Id*. After Benito S. posted bond, he was transported to ICE for processing, where ORR's referral notes indicate he stated he has no legal guardian in the United States, but reported he had been residing with his aunt. *Id*. On December 19, 2025, ORR spoke with Benito S.'s aunt regarding the

Sponsorship Application. *Id*. Benito S.'s aunt communicated she will not be able to sponsor Benito S. due to financial and limiting circumstances, and further stated she consulted with family friends to see if anyone is willing to sponsor Benito S., and at this time, there was no identified sponsor. *Id*.

On December 24, 2025, Benito S. first expressed interest in speaking with his Legal Service Provider about Long-Term Foster Care. *Id*. He then expressed interest in being sponsored by a friend, but after multiple discussions, Benito S. refused to contact his friend when he learned that the call would need to be screened. *Id*. On January 21, 2026, Benito S. confirmed that he wanted to proceed with Long-Term Foster Care and no longer wanted to pursue the request to speak to his friend or have his friend sponsor him. *Id*. ORR informed Benito S, on January 28, 2026, that it was approved to continue with the Long-Term Foster Care application and ORR would be compiling the necessary information. *Id*. On February 4, 2026, he was informed that ORR was compiling all required documents for the Long-Term Foster Care application. *Id*. On February 19, 2026, the Long-Term Foster Care packet was complete and sent out and Benito S. was informed. *Id*.

On March 5, 2026, ORR met with Benito S.; Benito S. informed ORR that he would like to accept the Long-Term Foster Care placement offer at [redacted] *Id*. [redacted] was notified of Benito S.'s acceptance of the offer for placement that same day. *Id*. Benito S. was admitted to [redacted] on March 10, 2026. *Id*. There is no active sponsor application pending for Benito S., so no denial has been issued for any Sponsor Application for Benito as of March 10, 2026.

STANDARDS OF REVIEW

I. Rule 65 – Preliminary Injunction

A preliminary injunction is "an extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 689 (2008). A party seeking such relief "must establish that [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest." *Winter v. NRDC*, 555 U.S. 7, 20 (2008). "Although [the D.C.] Circuit has taken no position on the 'sliding scale approach,' the movant must, at a minimum, 'demonstrate that irreparable injury is likely in the absence of an injunction.'" *Fla. EB5 Invs., LLC v. Wolf*, 443 F. Supp. 3d 7, 11 (D.D.C. 2020) (internal citations omitted) (Leon, J.).

Where, as here, "an injunction is mandatory—that is, where its terms would alter, rather than preserve, the status quo by commanding some positive act—the moving party must meet a higher standard than in the ordinary case by showing clearly that he or she is entitled to relief or that extreme or very serious damage will result from the denial of the injunction." *Columbia Hosp. for Women Found., Inc. v. Bank of Tokyo-Mitsubishi Ltd.*, 15 F. Supp. 2d 1, 4 (D.D.C. 1997) (internal quotation marks omitted), *aff'd*, 159 F.3d 636 (D.C. Cir. 1998); *Dallas Safari Club v. Bernhardt*, 453 F. Supp. 3d 391, 398 (D.D.C. 2020).

II. 5 U.S.C. § 705 – Relief Pending Review

Plaintiffs also invoke 5 U.S.C. § 705, which provides, in relevant part, that "[o]n such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court . . . may . . . postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings." "[A] stay under § 705 should be imposed for one—and only one—reason: to maintain the status quo in order to allow judicial review of the

underlying regulation to proceed in a 'just' manner." *Bauer v. DeVos*, 325 F. Supp. 3d 74, 106-07 (D.D.C. 2018) (emphasis added). Moreover, as the D.C. Circuit has explained, Section 705 is intended to "postpone the effective date of a not yet effective rule, pending judicial review." *Safety-Kleen Corp. v. EPA*, Nos. 92-1629, 92-1639, 1996 U.S. App. LEXIS 2324, at *2-3 (D.C. Cir. Jan. 19, 1996) (emphasis added). "The factors governing issuance of a preliminary injunction also govern issuance of a § 705 stay." *Dist. of Columbia v. USDA*, 444 F. Supp. 3d 1, 15 (D.D.C. 2020).

ARGUMENT

Plaintiffs' claims conflict with the authority vested in HHS over the care, custody, and release of UAC to suitable sponsors by the HSA and the TVPRA. *Vt. Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 543 (1978) ("[T]his much is absolutely clear. Absent constitutional constraints or extremely compelling circumstances, the administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties." (quotation omitted)). HHS "enjoys broad discretion in determining how best to handle related, yet discrete, issues in terms of procedures . . . and priorities." *See Mobil Oil Expl. & Producing Se. Inc. v. United Distribution Cos.*, 498 U.S. 211, 230 (1991). Plaintiffs' attempts to interfere with explicit statutory mandates and agency discretion to implement its own rules are unavailing. They failed to demonstrate that they are clearly entitled to relief or that extreme or very serious damage will result from the denial of an injunction—the standard applicable when requesting a mandatory injunction that would alter, rather than preserve the status quo. This Court should deny Plaintiffs' motion for a preliminary injunction.

I. Plaintiffs cannot demonstrate that they are likely to succeed on the merits.

A. ORR's application of its existing policies regarding the placement of UAC to re-referred UAC does not violate due process.

The Constitution prohibits the federal government and States from "depriv[ing]" a "person" of "life, liberty, or property, without due process of law." U.S. Const. Amend. V; *see* U.S. Const. Amend. XIV, § 1. The Supreme Court has recognized two types of due-process claims. *See Department of State v. Muñoz*, 602 U.S. 899, 910 (2024). A procedural-due-process claim takes as given the substantive determinations that would justify a deprivation of life, liberty, or property, but challenges the "adequacy of the[] procedures" for making those determinations. *Mathews v. Elridge*, 424 U.S. 319, 335 (1976). In contrast, a substantive-due-process claim challenges the substance of the determinations themselves, arguing that they are inadequate to justify the deprivation "at all." *Reno v. Flores*, 507 U.S. 292, 302 (1993). Here, Plaintiffs' argue that "ORR's policy of disregarding its own prior sponsor application approval decisions when a child re-enters ORR custody violates the Due Process Clause." Mot. at 20.

However, Plaintiffs' argument is based on the flawed assumption that a previously approved sponsorship application, from a year or even three years prior, establishes a permanent, irrevocable entitlement that continues after a UAC is re-referred into ORR custody. This position overlooks ORR's obligation to ensure the *current* and ongoing safety of UAC. *See* 45 C.F.R. § 410.1202(d). This position also incorrectly assumes that all prior sponsors wish to continue their sponsorship after a UAC has been re-referred to ORR custody. This is not the case. For two of the four named Plaintiffs in this case, ORR received new sponsorship information at some stage in the sponsorship process. Biswas Decl. ¶¶ 46, 47. And in another instance, the previous sponsor does not wish to proceed with sponsorship at all due to financial and limiting circumstances. *Id*. ¶ 48.

The TVPRA mandates vetting, not automatic release. Plaintiffs argue that the "least restrictive setting" requirement under 8 U.S.C. § 1232(c)(2)(A) envisions immediate return to a prior sponsor. Mot. at 31. Not so. The least restrictive setting must also be "in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). ORR cannot determine what is the best interest of a child who has just re-entered custody without conducting a subsequent and thorough evaluation. To hold otherwise would force ORR to rubber stamp placements, potentially returning UAC to abusive or negligent environments simply because a paper file from years ago says the sponsor was fit at that time.

While it is certainly possible that a UAC can be reunified with a prior sponsor, this should not be an automatic assumption. Indeed, the ORR application and subsequent vetting process reflects the reality that the circumstances of both sponsors and UAC are fluid. A background check is only valid for the previous period in which it was sought; new background checks must be conducted to account for the time since last checked. Requiring ORR to do all vetting anew ensures that a UAC is not released to a home that has become unsafe since the previous screening.

In short, a re-referred UAC's limited time in ORR custody while ORR evaluates sponsorship applications outweighs the risk of child abuse, neglect, endangerment, or trafficking. Therefore, ORR has not violated Plaintiffs' procedural due process rights when it keeps UAC in its custody while making custody decisions pursuant to the HSA, TVPRA, Foundational Rule, and UACB Policy Guide.

1. The *Mathews v. Eldridge* factors favor HHS

To determine what procedural due process requires, courts consider: (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." *Mathews*, 424 U.S. at 335. When applying this framework to the case at hand, the current procedures clearly do not violate Plaintiffs' procedural due process rights.

While UAC possess a constitutionally protected liberty interest, the Supreme Court has recognized that this interest is uniquely situated. Because "juveniles, unlike adults, are always in some form of custody," their interest in freedom from institutional confinement is necessarily qualified by the government's parens patriae interest in UAC safety and welfare. *Reno v. Flores*, 507 U.S. 292, 302 (1993) (internal citations omitted). Thus, ORR's obligation to preserve and promote the welfare of UAC justifies reasonable custodial care. *See id.* at 303.

Under the UACB Policy Guide, the sponsorship process is a transitionary and temporary placement occurring only during the pendency of immigration proceedings. *See* UACB Policy Guide § 2.1 (stating release must be safe and efficient without unnecessary delay). Consequently, the Government satisfies its due process obligations by conducting suitability assessments pursuant to 45 C.F.R. § 410.1202. These vetting procedures are essential in ensuring UAC physical and mental well-being and do not constitute an unconstitutional infringement on the UAC's qualified liberty. 45 C.F.R. § 410.1202(b).

Far from being redundant, ORR's vetting process is a crucial, evidence-based safety assessment designed specifically to address the vulnerabilities of UAC while in its care. *See* 45 C.F.R. § 410.1003(a). The depth of ORR's vetting reflects the reality that the life circumstances of both sponsors and UAC are fluid. Changes in household composition, financial stability, or a child's specific medical needs necessitate contemporaneous screenings to prevent release into unstable environments. Likewise, requiring updated identification, fingerprinting, or home studies

is not an unreasonable burden, but a necessary measure to ensure that a UAC is not released into a situation that has become unsafe since the previous screening, which, based on the cases of the four named Plaintiffs, could have occurred a year or even three years prior. Ultimately, the Government's interest in preventing release to an unsafe sponsor where a UAC could be abused, neglected, endangered, or trafficked, is more compelling than its interest in avoiding a temporary deprivation of liberty. The current regulatory framework as mandated by the TVPRA, HSA, Foundational Rule, and UACB Policy Guide, provides the appropriate balance without compromising UAC safety.

While Plaintiffs emphasize Congress's and the Foundational Rule's use of the word *promptly*, Mot. at 25, Congress set forth several other requirements that ORR must satisfy before releasing a child to a sponsor. ORR must ensure that potential sponsors are, in fact, suitable and that UAC "are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity." 6 U.S.C. § 279(b)(2)(A)(ii); *see* Biswas Decl., Ex. B, February 2025 Harper Memorandum (noting that 25.8 days did not permit ORR to conduct the adequate sponsor vetting measures necessary to ensure that UAC are not released into potentially dangerous situations like those detailed in the cited investigations). And ORR must ensure that UAC are "placed in a setting in which they are not likely to pose a danger to themselves or others." *Id.* § 279(b)(2)(A)(iii). Further, ORR must determine that a sponsor "is capable of providing for the child's physical and mental well-being." 8 U.S.C. § 1232(c)(3)(A). This safety and suitability determination must "at a minimum, include verification of the custodian's identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child." *Id.*

Additionally, to support their arguments regarding procedural due process, Plaintiffs rely on two decisions that arise in habeas: *Saravia* and *A.N.P.S. See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1183–88 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); *A.N.P.S. v. Salazar*, No. 25-CV-14778, 2025 LX 517028, at *1 (N.D. Ill. Dec. 22, 2025). Plaintiffs assert that these cases involve "similar factual circumstances" to the current case to establish a due process violation. Mot. at 21-22. However, the cases are distinguishable.

In *Saravia*, after receiving allegations of gang affiliation from local law enforcement officers, DHS proceeded to arrest the alleged gang members, three of whom were the UAC plaintiffs. *See Saravia*, 280 F. Supp. at 1178-80. The issue was whether ORR was accepting DHS's allegations of gang membership for the re-referred UAC without independent verification, which resulted in their later restrictive placement. *Id.* These facts are not present here. In this case, all named Plaintiffs are in standard programs unless the UAC meets the criteria for placement in a restrictive placement. *See* UACB Policy Guide § 1.2. And while one named Plaintiff, Diego N., had some gang related inquiries that arose during his time in ORR custody, ORR's home study revealed a positive recommendation with Diego N.'s father, assuming all other requirements are met. Biswas Decl. ¶ 45. Unlike the circumstances in *Saravia*, Plaintiffs' alleged "blanket policy" is simply ORR applying its vetting procedures for UAC sponsors, to *all UAC sponsors*, including re-referred UAC sponsors. Thus, Plaintiffs' reliance on *Savaria* is unrelated and inapplicable to the present case.

Furthermore, while the facts in *A.N.P.S.* are more closely aligned with the case at hand, this Court should not look to this non-binding authority. In *A.N.P.S.*, the district court held that the government violated due process when the UAC was arrested and re-detained without any explanation as to why, and that he should not have to go through the sponsorship process again.

2025 LX 517028, at *15. However, the district court's assessment rested on the incorrect assumption that HHS can control who is re-referred to their custody (it cannot). *See* Biswas Decl. ¶¶ 7-8. There, like here, DHS was not a party to the lawsuit. Thus, the reasons why a UAC would be re-referred were not in HHS's control. Thus, ORR must comply with its statutory mandated sponsorship vetting process. In the case of *A.N.P.S.*, this meant it needed time to vet the sponsor. *See* 2025 LX 517028, at *15-16. Distinct from detention, ORR's custody is intended to be temporary, with the ultimate goal of finding suitable placements. *See* 8 U.S.C. § 1232(c)(2)(A). This Court should not turn to *A.N.P.S.*, but should look to the TVPRA, HSA, Foundational Rule and UACB Policy Guide.

2. ORR has a compelling interest regarding the safety of UAC in its custody and the proposed expedited schedule for re-referred UAC would place an unnecessary administrative burden on the agency.

ORR's paramount interest is to make custody determinations that are in the "best interests of the child," a standard that ORR applies through a rigorous, multi-factored assessment of a child's safety and well-being. 8 U.S.C. § 1232(c)(2)(A); *see* 45 C.F.R. § 410.1003. Pursuant to § 410.1003, this determination is not a singular finding but a comprehensive evaluation that considers the child's expressed interests, mental and physical health, cultural background, and the intimacy of relationships between UAC and their family. *Id.* This mandate is reinforced through the UACB Policy Guide, which requires that any release "promote public safety and ensure that sponsors are able to provide for the physical and mental well-being of children." UACB Policy Guide § 2.1.

Additionally, HHS has an interest in preserving its administrative integrity. Plaintiffs request that ORR be ordered "to make an individualized determination within 72 hours of the class member's re-referral to ORR" as to whether material changed circumstances justify reconsidering

the "prior sponsor approval decision." Proposed Order, ECF No. 10-2 at 2. Second, Plaintiffs ask the Court to require ORR to provide all class members "with a hearing before a neutral and detached decisionmaker within seven (7) days of the class member's re-referral to ORR custody or within seven (7) days of this order if the class member is already in custody." *Id.* At these new administrative hearings, ORR would bear the burden of proof by clear and convincing evidence to show that the prior sponsor "is not capable of providing for the child's physical and mental well-being." *Id.* at 3. Plaintiffs propose detailed procedural requirements for the new hearings. *Id.* at 2–4.

Plaintiffs proposed timelines would impose an unnecessary administrative burden on ORR, requiring the agency to divert resources away from vetting sponsors and potentially compromising vetting quality. 72 hour and seven-day deadlines are also fundamentally incompatible with the TVPRA home study requirements, for which it often takes ten business days just to complete the initial written report. *See* 45 C.F.R. § 410.1204(b) (codifying the home study requirements); *see also* UACB Policy Guide § 2.4.2 (stating that the home study provider submits the written report within 10 business days of receipt of the referral). Furthermore, once a decision is made, 45 C.F.R. part 410 already provides a comprehensive administrative appeals process. *See* 45 C.F.R. § 410.1206; *see also* ORR UACB Policy Guide, §§ 2.7.7, 2.7.8.

The proposed timeline also fails to consider that ORR often does not learn that there may be a parent or legal guardian in the United States if the UAC does not disclose this information immediately. Biswas Decl. ¶ 39. Further, ORR must conduct a dangerousness assessment at the initial intake stage and prior to placement, based on the circumstances of the child's apprehension and re-referral. *Id*. Additionally, the hearing mechanism proposed by Plaintiffs is problematic as ORR does not have access to a neutral and detached decision maker. *Id*. ¶ 40. Instead, ORR would

need to enter into Inter Agency Agreements ("IAAs") to work with the Department Appeals Board ("DAB") to set up these hearings. *Id*. While ORR has previously entered into IAAs with the DAB to provide regulatorily required hearings for ORR matters, ORR does not believe it can expand the DAB's scope without entering into a new IAA. *Id*. As the Supreme Court noted in *Mathews*, at some point "the benefit of an additional safeguard . . . may be outweighed by the cost." *Mathews*, 424 U.S. at 323.

B. Plaintiffs are not likely to succeed on their APA claims.

Under the APA, "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review." 5 U.S.C. § 704. APA review is unavailable here because Plaintiffs have another adequate remedy in a court through a writ of habeas corpus and they do not challenge final agency action. In addition, Plaintiffs fail to show that ORR's actions are contrary to law or arbitrary and capricious. Finally, Plaintiffs ask for relief that is unavailable for an APA claim.

1. APA review is unavailable because Plaintiffs have an adequate remedy through a writ of habeas corpus.

Plaintiffs are not likely to succeed on their APA claims (Counts II and III) because Plaintiffs have another "adequate remedy in a court." 5 U.S.C. § 704. Plaintiffs challenge the fact or duration of ORR's custody, and those claims could be heard through a petition for a writ of habeas corpus. *Trump v. J.G.G.*, 604 U.S. 670, 674 (2025) (Kavanaugh, J., concurring) ("[G]iven 5 U.S.C. § 704, which states that claims under the APA are not available when there is another 'adequate remedy in a court,' . . . habeas corpus, not the APA, is the proper vehicle here."); *Muhammad v. Close*, 540 U.S. 749, 750 (2004) (per curiam) ("Challenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus[.]" (citing *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973))). Courts routinely address habeas claims from

detained aliens alleging that the government must release them or afford them greater procedural protections. *See, e.g.*, *J.G.G.*, 604 U.S. at 672–73; *Demore v. Kim*, 538 U.S. 510, 513–14 (2003); *D.B. v. Cardall*, 826 F.3d 721, 725 (4th Cir. 2016).

Plaintiffs' claims are core habeas claims: they challenge the fact and length of ORR's custody when the previously approved sponsor is available to take custody, and are more appropriately heard on a case-by-case basis. *See I.M. v. U.S. Customs & Border Prot.*, 67 F.4th 436, 442 (D.C. Cir. 2023). Indeed, as noted *infra*, Plaintiffs principally rely on two habeas cases, *Saravia* and *A.N.P.S. See Saravia*, 280 F. Supp. 3d at 1183–88, *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); *A.N.P.S.*, 2025 LX 517028, at *1 (N.D. Ill. Dec. 22, 2025).

Consequently, a proceeding for a writ of habeas corpus is an "adequate remedy" that forecloses APA review. *See Silva v. Bienemy*, No. CV 25-4118 (RC), 2026 WL 261910, at *3 (D.D.C. Feb. 1, 2026); *Vetcher v. Sessions*, 316 F. Supp. 3d 70, 78 (D.D.C. 2018); *Stern v. Fed. Bureau of Prisons*, 601 F. Supp. 2d 303, 305 (D.D.C. 2009); *see also Yi v. Maugans*, 24 F.3d 500, 507 (3d Cir. 1994).

2. APA review is unavailable because Plaintiffs do not challenge final agency action.

As relevant here, the APA strictly limits judicial review to "final agency action." 5 U.S.C. § 704. This finality requirement is a critical prerequisite, preventing premature judicial intervention in administrative processes that are not yet conclusive. Plaintiffs assert that the "reapplication policy, and each application of that policy to each Plaintiff and putative class member to disregard their sponsor's previous approval, is a final agency action." Compl. ¶ 95. That is incorrect. A two-prong test governs whether an agency action is "final." *See Bennett v. Spear*, 520 U.S. 154, 177–78 (1997). "First, the action must mark the 'consummation' of the

agency's decision-making process—it must not be of a merely tentative or interlocutory nature." *Id*. (citation omitted). Second, "the action must be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" *Id*. at 178 (citation omitted). Without final agency action, Plaintiffs "lack a cause of action under the APA." *Soundboard Ass'n v. Fed. Trade Comm'n*, 888 F.3d 1261, 1267 (D.C. Cir. 2018) (citation modified). The alleged agency actions that Plaintiffs challenge do not meet either prong of the *Bennett v. Spear* test.

As to the alleged "reapplication policy," Plaintiffs point to nothing establishing that such a policy exists in its own right. Plaintiffs do not allege when ORR supposedly adopted this policy. Plaintiffs also do not identify any document or regulatory action taken to adopt the alleged policy. ORR currently does not have a re-referral policy for UAC who are referred again to ORR by DHS after a previous release. Biswas Decl. ¶ 37. Moreover, ORR is in the process of reviewing cases of children re-referred, by another federal agency, in the interior United States who had previously been in the custody of a parent or legal guardian in the United States and where that same parent or legal guardian is again seeking to sponsor the child. *Id*. ¶ 38. ORR requires background checks of all sponsors including sponsors of children re-referred to custody. *Id*. ORR will determine as part of this review of re-referred cases, whether the results of these background checks reveal the parent or legal guardian may be unfit or a danger to the child, such that additional vetting may be required in line with ORR's process for vetting new sponsors. *Id.*

Thus, the supposed policy that Plaintiffs challenge is not the consummation of the agency's decision-making, as required under the first prong. Moreover, legal consequences to Plaintiffs do not flow from the supposed policy (that does not exist). Rather, legal consequences flow to Plaintiffs from the TVPRA and the Foundational Rule that require ORR to conduct certain steps and to consider the potential sponsor's current fitness and the UAC's present circumstances prior

to release in all cases. 8 U.S.C. § 1232(c)(3)(A); 45 C.F.R. § 410.1202(b)–(c), (f). Therefore, Plaintiffs also do not meet the second prong of the *Bennett v. Spear* test.

As to each Plaintiffs' particular case, requiring the potential sponsor to reapply is not final agency action either. The sponsorship application is not the consummation of the agency's decision-making; it is a procedural step before the ultimate decision of whether to release the child to the sponsor. ORR has not made a final decision on that question. And if ORR does deny release, Plaintiffs may appeal that decision. 45 C.F.R. § 410.1206; *see* Biswas Decl. ¶ 34. Additionally, the alleged "reapplication policy" incorrectly assumes that previously approved sponsors are the *same sponsors* who are re-submitting sponsorship applications after the named Plaintiffs were re-referred to ORR custody. In the small sample of named Plaintiffs in this case, 50% had new sponsors seek sponsorship at some stage in the process. Biswas Decl. ¶¶ 46, 47. This understandably requires ORR to assess sponsorship anew.

In sum, Plaintiffs are not likely to succeed on their APA claims because they do not challenge final agency action.

3. ORR's actions are not contrary to law.

The HSA, TVPRA, and Foundational Rule do not create any special rules for UAC re-referred to ORR after ORR previously released the UAC to a sponsor. Because no provisions address that situation, Plaintiffs cite general provisions. Plaintiffs argue that "ORR's reapplication policy violates Defendants' legal obligations to place each unaccompanied child 'in the least restrictive setting that is in the best interest of the child,' 8 U.S.C. § 1232(c)(2)(A)," and to "'release a child from its custody without unnecessary delay' to a suitable sponsor, with a preference for close family members, 45 C.F.R. § 410.1201(a)." Mot. at 33. Plaintiffs contend,

"The TVPRA does not require ORR to repeat its sponsor application process a second time just because a child re-enters its custody." Mot. at 33.

However, the TVPRA is silent as to what should happen when a UAC is re-referred to its custody. But the TVPRA is not silent on ORR's duties when it comes to the placement and safety of UAC. ORR must verify that a sponsor, whether previously approved or a first-time applicant, remains "capable of providing for the child's physical and mental well-being." 8 U.S.C. § 1232(c)(3)(A). As such, past approvals are not, and should not be, a guarantee for re-approval.

Plaintiffs argue, "And absent evidence of material changed circumstances that render the sponsor unfit, refusing to release a child to a previously vetted and approved sponsor or alternate caregiver plainly constitutes unnecessary delay. 45 C.F.R. § 410.1201(a)" Mot. at 34. But, because ORR loses visibility into a household the moment a UAC is released from ORR custody, the act of the UAC re-entering ORR custody is inherently a material change that necessitates a new verification of a sponsor's fitness. Biswas Decl. ¶ 15 (discussing how 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); *see id*. ¶ 45 (noting that while in ORR care Diego N. displayed a "history of making gang-related comments and drawings" alongside concerns regarding his criminal history while in his father's care, which required a home study to be commenced).

Plaintiffs assert, "Subjecting a child to endless re-detention and re-evaluation of their sponsors without a showing of material changed circumstances is fundamentally inconsistent with 'the TVPRA's instruction to place the minor in the least restrictive appropriate setting.'" Mot. at 33. However, there is no evidence of "endless re-detention and re-evaluation." ORR made a determination one to three years ago in each case based on its policies and the information it had

at the time. Biswas Decl. ¶¶ 45–48. Now ORR has to make another determination based on *current* information, including when it receives new sponsorship applications from new applicants or no sponsorship applications at all. *Id*. ¶¶ 46–48; *see id*. ¶ 37. Again, ORR does not have a re-referral policy for children who are referred again to ORR by DHS after a previous release. *Id*. ¶ 37. Instead, ORR applies the same requirements (as described in regulations and sub-regulatory guidance) as to release for all UAC in its custody, including to the named plaintiffs in this litigation. *Id*. Thus, the only applicable policies for re-referrals are contained within 45 C.F.R. §§ 410.1200-410.1210. *Id*.

Plaintiffs argue, "As a result of ORR's new sponsorship requirements and widespread increased fear of immigration enforcement during the sponsorship process, children's average time in custody has increased dramatically." Mot. at 12. But Plaintiffs do not challenge the "legality of the proof of identification and proof of income requirements" in this case. Mot. at 11 n.5. And while "[o]ther children have made the difficult decision to seek release to a different sponsor because they fear their original sponsor will be targeted for immigration enforcement through their participation in the sponsorship process," Mot. at 14, that is not ORR's fault. And it is unclear how Plaintiffs' proposed process, *see* Proposed Order, ECF No 10-2, would fix this concern.

Plaintiffs also argue that they are "entitled to an order enjoining ORR from enforcing its blanket policy of disregarding ORR's prior sponsorship application approval decision." Mot. at 20. But to be clear, ORR is not disregarding that decision. That decision was made at a particular time based on particular facts. ORR cannot assume that the same facts are true. Any time a child enters ORR custody, ORR must evaluate the sponsor's suitability. So even if the sponsor had previously been vetted and approved, ORR requires the sponsor to apply anew. Here, that has the practical effect of requiring sponsors to follow ORR's updated vetting requirements for sponsors.

And the regulations support ORR's application of vetting sponsors to re-referred UAC. "Prior to releasing an unaccompanied child, ORR *shall* conduct a suitability assessment to determine whether the potential sponsor is capable of providing for the unaccompanied child's physical and mental well-being." 45 C.F.R. § 410.1202(b) (emphasis added). This language has no exceptions. And ORR "shall conduct a suitability assessment." "Shall" is mandatory. The regulations further reinforce ORR's duty to conduct sponsor suitability assessments: "Subject to an assessment of sponsor suitability, . . . ORR shall release a child from its custody . . . ." *Id.* § 410.1201(a). This section, by implication, requires an assessment of sponsor suitability before ORR releases the child. Thus, ORR has a duty to conduct suitability assessment of a sponsor each time it releases a child.

Other provisions reinforce that ORR needs to evaluate even previously approved sponsors. "ORR *shall* assess the nature and extent of the potential sponsor's previous and *current* relationship with the unaccompanied child, and the unaccompanied child's family, if applicable." *Id.* § 410.1202(d) (emphasis added). If ORR excepted previously approved sponsors from suitability assessments, ORR would be ignoring this regulatory command that it "shall assess" the "current relationship" between sponsor, child, and family. *Id.* Regulations must be read so that each provision is given effect. Ignoring this requirement to assess the sponsor and child's current relationship could have consequences too—potentially missing child abuse during the previously approved sponsorship period.

Indeed, "ORR *shall not be required to release* an unaccompanied child to any person or agency *it has reason to believe may harm or neglect the unaccompanied child* or f*ail to present the unaccompanied child* before DHS or the immigration courts when requested to do so." *Id.* § 410.1203(e) (emphasis added). This regulation imposes an ongoing, continuous obligation on

ORR. To meet this ongoing, continuous obligation, ORR must evaluate all potential sponsors; excepting previously approved sponsors would ignore this regulatory obligation on ORR to ensure 1) the child's safety and 2) the child's obligation to attend future immigration proceedings.

Therefore, ORR's actions are not contrary to law.

4. ORR's actions are not arbitrary and capricious.

As discussed *supra* at I.A-F, ORR simply applies the same congressionally mandated sponsor vetting and release requirements to UAC as it does to re-referred UAC; these requirements are based in law and envision that ORR looks at the circumstances currently before it when making custody determinations. Thus, the TVPRA, the HSA, the Foundational Rule, and its own UACB Guidance Policies, all exist to ensure the UAC are safe and that ORR makes decisions that are in the best interest of the child. While Plaintiffs have postured a preferred ORR assessment method for re-referred UAC, there are no such legal requirements based in any text. Rather, ORR must follow the statutes, regulations, and policies in existence when it comes to the safety of UAC in its custody, even those that are re-referred.

Thus, ORR has provided a rational basis and its actions are not arbitrary and capricious under the APA. "The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency[.]" *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation omitted); *FCC v. Fox Television Stations, Inc*., 556 U.S. 502, 513 (2009). "[This] standard of review is highly deferential to the agency," *Bean Dredging, LLC v. United States*, 699 F. Supp. 2d 118, 126 (D.D.C. 2010), and to survive the "arbitrary and capricious" standard, the agency need only articulate "a rational connection between the facts found and the choice made," *Motor Vehicle Mfrs*., 463 U.S. at 43. "The question is not what [the reviewing court] would have done, nor whether [the court]

agree[s] with the agency action. Rather, the question is whether the agency action was reasonable and reasonably explained." *Jackson v. Mabus*, 808 F.3d 933, 936 (D.C. Cir. 2015). Here, the Court should not substitute Plaintiffs' preferred framework for ORR's mandated structure, even if it were to disagree with that structure. Under the deferential arbitrary and capricious standard that the Court applies under the APA, ORR's abiding by the TVPRA, HSA, Foundational Rule, and UACB Policy Guidance to re-referred UAC is lawful.

C. The APA does not permit Plaintiffs' requested relief.

Plaintiffs do not ask this Court simply "to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings." 5 U.S.C. § 705. Neither do Plaintiffs seek merely to "hold unlawful and set aside agency action." 5 U.S.C. § 706(2). Plaintiffs ask the Court to create a new administrative process from whole cloth.

While the APA permits courts to "compel agency action unlawfully withheld or unreasonably delayed," 5 U.S.C. § 706(1), Plaintiffs have not brought such a claim. This is likely because those claims "can proceed only where a plaintiff asserts that an agency failed to take a *discrete* agency action that it is *required to take*." *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004) (emphasis added). No law requires ORR to implement the administrative process that Plaintiffs propose. To the extent Plaintiffs believe that ORR should create a new administrative process to deal with this precise situation, they may petition for rulemaking. *See* 5 U.S.C. § 553(e). *See* Proposed Order, ECF No. 10-2.

Thus, the APA does not permit such a sweeping remedy at all, much less on a preliminary basis. "When a district court reverses agency action and determines that the agency acted unlawfully, ordinarily the appropriate course is simply to identify a legal error and then remand to the agency, because the role of the district court in such situations is to act as an appellate tribunal."

N. Air Cargo v. U.S. Postal Serv., 674 F.3d 852, 861 (D.C. Cir. 2012). It would be "quite anomalous to issue an injunction." *Id.*; *see Bennett v. Donovan*, 703 F.3d 582, 589 (D.C. Cir. 2013) ("[I]t is the prerogative of the agency to decide in the first instance how best to provide relief."). Therefore, even if the Court concludes that Plaintiffs are likely to succeed on their APA claims, the Court should decline to enter Plaintiffs' proposed injunction.

II. Plaintiffs have not demonstrated they will suffer irreparable harm without the extraordinary relief of a preliminary injunction.

Plaintiffs have not established that they are suffering irreparable harm that warrants a preliminary injunction. The "standard for irreparable harm is particularly high in the D.C. Circuit." *Fisheries Survival Fund v. Jewell*, 236 F. Supp. 3d 332, 336 (D.D.C. 2017). The Supreme Court has made clear that a court may not issue "a preliminary injunction based only on a *possibility* of irreparable harm . . . [since] injunctive relief [i]s an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22 (emphasis added).

In fact, if a party makes no showing of imminent irreparable injury, the court may deny the motion for injunctive relief without considering the other factors. *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 747 (D.C. Cir. 1995). "[P]roving 'irreparable' injury is a considerable burden, requiring proof that the movant's injury is '*certain, great*[,] *and actual*—not theoretical—and *imminent*, creating a clear and present need for extraordinary equitable relief to prevent harm." *Nat'l Immigr. Project of Nat'l Laws. Guild v. Exec. Off. of Immigr. Rev*, 456 F. Supp. 3d 16, 33 (D.D.C. 2020) (alterations in original) (quoting *Power Mobility Coal. v. Leavitt*, 404 F. Supp. 2d 190, 204 (D.D.C. 2005)). And even when demonstrated, irreparable harm "may be insufficient on its own to warrant a preliminary injunction." *Hanson v. D.C.*, 120 F.4th 223, 243-44 (D.C. Cir. 2024).

Here, Plaintiffs allege that they suffer irreparable harm as they "are all desperate to be released from ORR congregate care and return home to their families." Mot. at 39. Plaintiffs generally assert that they are "suffering emotional distress." ECF No. 10 at 2. Even if accepted as true, these assertions of irreparable harm are mitigated by the government's provision of healthcare to UAC in ORR custody. While placed at ORR standard programs, Plaintiffs are provided comprehensive health care, including mental health care and emergency care. 45 C.F.R. § 410.1307(b)(1), (6). More broadly, the government contests Plaintiffs' premise that being cared for in one of ORR's standard programs constitutes irreparable harm. UAC are in ORR custody, but almost never detained. Almost all UAC are placed in standard programs that are not restrictive. 45 C.F.R. § 410.1104. And as discussed *supra*, Congress mandates that HHS take responsibility for the care and custody of all UAC. 8 U.S.C. § 1232(b)(1). ORR's standard programs provide numerous services to care for UAC. *See generally* 45 C.F.R. § 410.1302. Of course, ORR prefers to place UAC with a vetted, suitable family member in the community, but ORR must maintain custody while that process occurs. *See* 8 U.S.C. § 1232(c)(2)(A).

To the extent the named Plaintiffs allege that ORR custody becomes an irreparable injury at some number of days, they do not identify what that point is. *See generally* Mot. at 12-18 (discussing prolonged time in ORR custody). Even if some length of ORR custody were to constitute irreparable harm, the length of time is not solely attributable to ORR. For example, Renesme R.'s paternal aunt made the initial sponsorship application after Renesme R. was re-referred to ORR custody. Biswas Decl. ¶ 46. However, four months into the process, her aunt proceeded to withdraw her sponsorship application. *Id.* Then her former sponsor chose to apply. *Id.* In sum, Plaintiffs' showing is insufficient to meet their "considerable burden" of proving that the alleged injury is "certain, great, and actual," as well as "imminent." *Nat'l Immigr. Project*, 456

F. Supp. 3d at 33. Because Plaintiffs have not made a clear showing of irreparable harm, this Court should not grant injunctive relief.

III. Plaintiffs' request for preliminary injunctive relief is contrary to the public interest and the balance of equities weighs in ORR's favor.

The Court should deny Plaintiffs' motion for a preliminary injunction because the balance of equities and the public interest weigh strongly in ORR's favor. Any injunctive relief—preliminary or permanent—"is a matter of equitable discretion; it does not follow from success on the merits as a matter of course." *Winter*, 555 U.S. at 32. Plaintiffs have not met their burden to prove that the Court should exercise its equitable discretion to enter an injunction here.

First, because of the public's interest in the well-being of UAC, the Court should permit ORR to continue to utilize the Congressionally mandated vetting procedures that it has determined are necessary to ensure UAC safety. Plaintiffs assume that all former sponsors of re-referred UAC are in fact still suitable. But ORR cannot make this assumption, let alone make this assumption in 72 hours. The risks are too grave. Indeed, this Court must give substantial deference to ORR's experience and predictive judgments about the realities of fraud and human trafficking in the absence of current vetting requirements. *See Winter*, 555 U.S. at 27.

Second, the government has a significant interest in "protecting the community from crime." *Schall v. Martin*, 467 U.S. 253, 264 (1984). For example, 8 U.S.C. § 1232(c)(1) requires HHS to "establish policies and programs to ensure that unaccompanied alien children in the United States are protected from traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity." Asking ORR to make this determination within 72 hours or 7 days could put UAC in jeopardy. Indeed, "[a] rushed judgment is a dangerous one[.]" *Del. State Sportsmen's Ass'n, Inc. v. Del. Dep't of Safety & Homeland Sec.*,

108 F.4th 194, 203 (3d Cir. 2024), *cert. denied sub nom. Gray v. Jennings*, 145 S. Ct. 1049 (2025). At their current placements in ORR custody, Plaintiffs are cared for in safe environments.

Finally, the Court should "rightly hesitate to interfere with exercises of executive . . . authority" such as ORR's decisions here regarding the treatment of re-referred UAC with the same care as UAC encountered by ORR for the first time. *Del. State Sportsmen's Ass'n*, 108 F.4th at 205.

The balance of equities and the public interest show that this Court should not grant a preliminary injunction. The public interest supports deferring to ORR's professional judgment about the steps needed to properly vet sponsors.

IV. The Court should deny Plaintiffs' request for provisional class certification and should address class certification in the ordinary course.

Plaintiffs have failed to demonstrate that they are entitled to class certification on a provisional basis because they have not shown in their preliminary injunction that they satisfy the requirements of Federal Rule of Civil Procedure 23. In granting such provisional certification, in support of preliminary injunctive relief, a plaintiff must satisfy all the requirements of class certification under Rule 23. *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 179–80 (D.D.C. 2015) (citing *Berge v. United States*, 949 F. Supp. 2d 36, 49 (D.D.C. 2013)). In deciding whether class certification is appropriate, a district court must ordinarily undertake a "rigorous analysis" to see that the requirements of the Rule have been satisfied. *See Gen. Tel. Co. of SW v. Falcon,* 457 U.S. 147, 161 (1982). "Rule 23 does not set forth a mere pleading standard." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011).

Rather, the party seeking class certification bears the burden of "affirmatively demonstrat[ing] his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Id.* (emphasis in

original). In short, should the Court even consider issuing class-wide relief, it must first thoroughly consider Rule 23 requirements. Because Plaintiffs have failed to make that showing here, the Court should deny their request for provisional class certification.

Additionally, because Defendants' Opposition to Plaintiffs' Motion for Class Certification shall be filed on March 10, 2026 (the same day this pleading shall be filed), Defendants request that this Court address the full merits of class certification in the ordinary course. *See generally* Defs' Mot. Opp. Class Cert., ECF No. 24.

V. If the Court grants a preliminary injunction, it should require bond.

Finally, if the Court were to deem preliminary injunctive relief warranted, Plaintiffs must be required to post security pursuant to Federal Rule of Civil Procedure 65(c). The Rule mandates that a court "may issue a preliminary injunction or a temporary restraining order *only if the movant gives security* in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c) (emphasis added).

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' Motion for a Preliminary Injunction and their request to provisionally certify the putative class.

Dated: March 10, 2026

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DIEGO N., *et al*., Plaintiffs, v. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*, Defendants.	Civil Action No. 1:26-cv-577-JCN

DECLARATION OF TOBY BISWAS

I, **Toby Biswas**, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the Assistant Deputy Director for Policy for the Unaccompanied Alien Children Bureau ("UACB"), and manage the Division of Policy Coordination & Intergovernmental Affairs, and the Division of Policy Administration & Legal Affairs within the Office of Refugee Resettlement ("ORR"), an entity within the Administration for Children and Families ("ACF"), U.S. Department of Health and Human Services ("HHS").

2. I have held various roles within ORR since joining the agency in November 2009, and I have held my current role since August 2025. My responsibilities encompass the development and implementation of ORR's policies and procedures concerning the care and custody unaccompanied alien children ("UAC"). In this capacity, I am responsible for ensuring ORR's implementation of and compliance with programmatic policy prerogatives and statutory responsibilities, including those arising under the Homeland Security Act of 2002 ("HSA"), 6

U.S.C. § 279; Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), 8 U.S.C. § 1232; and ORR's regulations, including the Foundational Rule, 45 CFR part 410.[1]

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

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

4. An unaccompanied alien child means a child who has no lawful immigration status in the United States; has not attained 18 years of age; and with respect to whom there is no parent or legal guardian in the United States or no parent or legal guardian in the United States is available to provide care and physical custody. 6 U.S.C. § 279(g)(2).

5. Pursuant to the TVPRA, absent exceptional circumstances, "any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours *after determining that such child is an unaccompanied alien child.*" 8 U.S.C. § 1232(b)(3) (emphasis added).

6. As the TVPRA makes clear, the determination that a child is a UAC is made by another department or agency of the Federal Government prior to the UAC's transfer to ORR custody. *See* 8 U.S.C. § 1232(b)(3).

7. ORR "*shall* accept referrals of unaccompanied children, from any department or agency of the Federal Government at any time of day, every day of the year." 45 C.F.R. § 410.1101(a) (emphasis added).

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[1] ORR policies with respect to UAC are also embodied in the ORR UAC Bureau Policy Guide ("UACB Policy Guide"), which is publicly available on ORR's website at https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide.

8. ORR has no ability to refuse a referral when the referring federal agency transfers custody to it of an individual that other agency has determined to be a UAC. *See generally* 8 U.S.C. § 1232(b).

9. While "ORR may seek clarification about the information provided by the referring agency as needed", the regulation does not provide for ORR to refuse to accept a referral or demand the referring agency change the child's designation as a UAC. 45 C.F.R. §§ 410.1101(a), (b); 8 U.S.C. § 1232(b).

10. Once UACs are placed in ORR's custody, ORR's goal is to release them to suitable sponsors where consistent with its statutory mandate to ensure that placement does not result in danger to UACs, to the community, or risk of flight by any UAC. *See, e.g.*, 6 U.S.C. § 279(b)(1), (b)(2)(A)(ii); 8 U.S.C. § 1232(c)(1), (c)(3)(A).

11. ORR must balance its responsibility to make and record prompt and continuous efforts towards release of UACs, *see* 45 C.F.R. § 410.1203(a), with concurrent duties to ensure the safety of releases.

12. The TVPRA prohibits HHS from releasing a child to a proposed custodian unless HHS first "makes a determination that the proposed custodian is capable of providing for the child's physical and mental well-being," which "shall, at a minimum, include verification of the custodian's identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child." 8 U.S.C. § 1232(c)(3)(A).

13. In addition, under its regulations, which implement the prior *Flores* Settlement

Agreement ("FSA"),[2] ORR assesses all potential sponsors (even when the potential sponsor alleges that they are a child's parent or legal guardian) before making any release determination, including a review of the potential sponsor's strengths, resources, risk factors, and relationship to the UAC. *See, e.g.*, 45 C.F.R. §§ 410.1201(a); 1202(b) and (c) (implementing Paragraphs 14 and 17 of the FSA, respectively).

14. Further, as part of the sponsor suitability assessment process:

> "ORR shall evaluate the unaccompanied child's current functioning and strengths in conjunction with any risks or concerns such as: (1) Victim of sex or labor trafficking or other crime, or is considered to be at risk for such trafficking due, for example, to be observed or expressed current needs e.g., expressed need to work or earn money; (2) History of criminal or juvenile justice system involvement (including evaluation of the nature of the involvement, for example, whether the child was adjudicated and represented by counsel, and the type of offense) or gang involvement." 45 C.F.R. § 410.1202(f).

15. The sponsor assessment process is particularly important because ORR is not a law or immigration enforcement agency and lacks the authority to hold individuals accountable by reassuming care if the sponsor abuses or neglects a child after a UAC has been released from ORR custody. Instead, ORR only takes children into its custody upon referral by another federal agency, as described in 8 U.S.C. § 1232(b). In this regard, ORR is also very different from state child welfare agencies, which typically retain such authority post-placement. Accordingly, ORR must front-load

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

child safety considerations, including whether the child may pose a safety risk to the community, in its identity verification and sponsor-vetting policies.

16. The process for the safe and timely release of UAC from ORR custody involves several steps, including: the identification of sponsors; sponsor application; interviews; the assessment (evaluation) of sponsor suitability, including verification of the sponsor's identity and relationship to the child (if any), background checks, and in some cases home studies; and post-release planning. *See generally* 45 C.F.R. part 410, subpart C. Also, under ORR sub-regulatory guidance, there are four 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; (3) Category 3, consisting of other sponsors, such as distant relatives, unrelated adult individuals, or an institutional/organizational sponsor; (4) Category 4: no sponsor identified. *See* ORR UACB Policy Guide ("UACB Policy Guide"), § 2.2.1, available at https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2_2.2.1 (revised March 6, 2026).

17. A potential sponsor must complete a sponsorship application package to be considered as a sponsor. 45 C.F.R. § 410.1202. The sponsor must provide unexpired government-issued identification documentation for the sponsor and any other adults living in the household or identified in a sponsor care plan; and, along with any adult living in his or her household, undergo background checks. UACB Policy Guide §§ 2.2.4, 2.5. All potential sponsors must also submit proof of address, income, sponsor-child relationship, and criminal history documents (if applicable). *Id*. § 2.2.4. ORR does not disqualify potential sponsors based solely on their

immigration status or for law enforcement purposes. *Id*. § 2.6.

18. In mid-2023, ORR established an Integrity & Accountability ("I&A") Team to detect and prevent fraud. The I&A Team identified several instances of fraudulent sponsorship applications, document falsifications, and patterns of human trafficking and exploitation. For instance, the Team has identified instances of children and sponsors using altered birth certificates or unaltered birth certificates belonging to another person. The Team found that the fraud often involved collusion with other people, such as a family member in the Country of Origin. For example, the I&A Team identified 10 UAC who were released to sponsors who committed intentional document fraud in October 2024. The Team believes, however, that this level of fraud is underreported. The volume of fraud is difficult to capture because the different categories of sponsors require varying documentation and scrutiny levels. For example, Category 1 sponsors (parents or legal guardians) and Category 2A[3] (close relatives who have previously served as primary caretakers for the UAC) and 2B (close relatives who have not previously served as primary caretakers for the UAC) may be subject to less vigorous background check requirements than the Category 3 sponsors (distant relatives and unrelated adults). ORR believed there was a significant risk that bad actors realized there were diminishing levels of scrutiny with increasing degrees of (alleged) relatedness to UAC and gamed the system under ORR's previous sponsor supporting documentation policies.

19. In one particularly egregious case, the I&A Team found that a woman and her partner attempted to sponsor a total of 15 UAC over a five-year period by using multiple aliases. The woman used various aliases to attempt to sponsor eight UAC over the same period, with four

[3] On March 6, 2026, ORR updated its policy and procedural guidance to phase out the terminology of referring to "Category 2A" and "2B" sponsors separately, and instead consolidated the two into "Category 2" which would encompass both the former 2A and 2B sponsors.

UAC being released to her and four unsuccessful attempts to sponsor other UAC. The aliases were only discovered when the sponsor underwent fingerprinting. Of the four successful sponsorships, three were Category 1 cases, and one was a Category 2A case. Despite this evidence, ORR's data revealed that less than 1% of sponsorship applications have been denied in recent years, highlighting systemic gaps in oversight that create dire child safety concerns.

20. In December 2022, the Permanent Subcommittee on Investigations within the U.S. Senate Committee on Homeland Security and Governmental Affairs ("the Subcommittee") published a report detailing the inadequate treatment of UAC in federal care and the insufficient safeguards to ensure they are not trafficked or abused following their release. The Subcommittee found that despite the increased number of UAC entering the United States in 2021 and 2022, the completion of background checks by ORR significantly declined from FY 2019. Moreover, the Subcommittee identified the lack of adequate sponsor background checks and the waiver of certain background check requirements on household members, even when releasing a child to his or her parent, as areas where additional safeguard measures were necessary. The Subcommittee specifically recommended that ORR enhance its procedures for verifying pre-existing relationships and develop formal guidance for case managers during the verification process. The Subcommittee also 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 will prohibit further consideration of the release of a child into their custody.

21. In February 2024, HHS OIG published its findings in *Gaps in Sponsor Screening and Follow-up Raise Safety Concerns for Unaccompanied Children* that:

a. In 16 percent of children's case files, one or more required sponsor safety checks lacked any documentation indicating that the checks were conducted.

b. For 19 percent of children who were released to sponsors with pending FBI fingerprint or State child abuse and neglect registry checks, children's case files were never updated with the results.

c. In 35 percent of children's case files, sponsor-submitted IDs contained legibility concerns.

d. ORR failed to conduct mandatory home studies in two cases and four other cases raise concerns about whether ORR guidance on discretionary home studies should offer more specificity.

e. In 5 percent of cases, sponsor records within ORR's case management system were not updated with child welfare outcomes or sponsorship history. [Exhibit A].

As a result of these findings, HHS OIG recommended, among others, that ORR develop additional safeguards to ensure that all safety checks are conducted and documented prior to approving the release of a child to their sponsor. This recommendation is still marked as ongoing on the HHS OIG recommendation implementation tracker.

22. On January 20, 2025, President Trump signed Executive Order 14159, "*Protecting the American People Against Invasion*" which ordered the Secretary of Health and Human Services, along with the Attorney General and the Secretary of Homeland Security, to take "all appropriate action to stop the trafficking and smuggling of alien children into the United States[.]" 90 FR 8443, at 8447.

23. On February 4, 2025, former Acting Director of ORR, Mellissa Harper, issued a memorandum ("Harper Memo") outlining immediate changes to address ongoing concerns with gaps in ORR's sponsor vetting process, as well as fraud and trafficking. [Exhibit B]. The

memorandum highlighted one particularly egregious instance of sponsor fraud, where a potential sponsor had obviously photoshopped himself into a photograph to establish kinship with the child. Subsequently, that same potential sponsor presented a foreign identification card bearing the name and photograph of another individual in an attempt to establish his identity and sponsor another child. In another example regarding age fraud, a UAC killed his sponsor months after he was released from ORR care. It was later discovered during a law enforcement investigation that the UAC was actually 23 years old at the time of the murder. In the memorandum, former Acting Director Harper specifically cited the results of the aforementioned investigations as the rationale for implementing immediate policy changes, which include mandatory enhanced biometric collection and background checks, reassessment of the use of secondary documents that cannot be reliably verified as proof of identity, and sponsor presentation of original documents in-person.

24. The Harper Memo noted that the average length of care, which at the time was 25.8 days, did not permit ORR to conduct the adequate sponsor vetting measures necessary to ensure that children are not released into potentially dangerous situations like the ones detailed in the numerous investigations.

25. In response to the Harper Memo, on February 14, 2025, ORR issued Field Guidance ("FG") 26 which requires all potential sponsors, their adult household members aged 18 and above, and all adult caregivers identified in a Sponsor Care Plan undergo national fingerprint-based FBI background checks. FG 26 also restricts the acceptable list of identification to only unexpired and legible photocopies or high-resolution digital scans/photos of identification documents for establishing identity purposes. These sponsor vetting changes directly support ORR's efforts to combat sponsor fraud and mitigate risk of human trafficking of unaccompanied alien children by: requiring the same identity document be used as part of the sponsorship application, the fingerprint

application, and at discharge; ensuring that acceptable identity documents are easily validated as expired documents or unoriginal copies are not able to be consistently authenticated by issuing agencies; and re-establishing universal FBI fingerprints for all sponsors, a policy that was in place prior to 2018 – ensuring equity in background information available for each sponsor as part of the totality of circumstances assessment conducted by ORR in making release decisions.

26. On March 7, 2025, in alignment with ORR's statutory and regulatory requirements (*see* 8 U.S.C. § 1232(c)(3)(A) and 45 C.F.R. § 410.1202) and to address identified gaps in the reporting of fraud incidents to HHS Office of the Inspector General ("HHS OIG"), ORR updated its UACB Policy Guide Sections 2.2.4, 2.7.4, and 5.8.2 to align the acceptable identity documents for identity verification purposes with the standards used for I-9 verifications as a safer framework to mitigate reliance on foreign-issued identity documents, and establish clear protocols for detecting, documenting, and responding to fraud, including preventing fraudulent actors from exploiting the UAC Bureau and UAC for trafficking or other forms of exploitation. The updated list of documents ensures that the accepted documents from potential sponsors meet similar criteria as those used for I-9 verifications. In balance, ORR continues to afford due process protections for most relative sponsors, including providing written notice of the reason for the denial and opportunity to pursue an administrative appeal available to parents or other close relatives.

27. In further justification of this revision, ORR stated, in an accompanying decision memo, that while its former policies permitted the acceptance of a wide variety of identity documents, including many foreign-issued documents, ORR has encountered difficulties authenticating foreign-issued documents, especially in a timely manner. ORR is aware of widespread fraud involving the use of such documents and has had to rely on foreign consulates and embassies, often liaising with the Department of State, to authenticate documents issued

outside the United States. This process is complicated by international relations (including whether the United States maintains diplomatic relations with certain countries) and the stability of certain foreign states. [Exhibit C]. Therefore, to address concerns regarding sponsor fraud involving identity documents, ORR's revised policy relies on documents that the federal government relies on to establish identity for both citizens and non-citizens. In consideration of family reunification, the policies contemplate an exception for Category 1 sponsors on a case-by-case basis. Regarding proof of address documentation, ORR has previously released children to addresses that did not include apartment numbers or were themselves suspected to be fraudulent; resulting in children being released to locations that may not have been actual residences or for which the specific residential unit is unknown. Regarding sponsor denial criteria, ORR clarified that sponsor or adult household member refusal to present for fingerprinting would be sufficient for denial of release as failure to present can be an indication that the individual is trying to conceal known biometrics or criminal history, which could themselves be grounds for sponsorship denial. In balance, ORR continues to afford due process protections for most relative sponsors, including providing written notice of the reason for the denial and opportunity to pursue an administrative appeal available to parents or other close relatives.

28. On March 14, 2025, in the effort to combat fraud and consistent with statutory requirements to place a UAC with an appropriate custodian (*see* 8 U.S.C. § 1232(c)(3)(A), ORR issued FG 27 which utilizes DNA testing to confirm kinship of any potential sponsor who claims a biological relationship with the child. While the FG states that submitting a DNA sample is not

mandatory, failing to do so may result in ORR's recategorizing the sponsorship as an unrelated Category 3 sponsorship and necessitating enhanced vetting procedures.[4]

29. On April 15, 2025, to support child safety and further mitigate the risk of human trafficking, ORR revised its UACB Policy Guide Sections 2.2.4 and 2.4.1 to include income verification measures. This revision aims to ensure that sponsors can financially support the children they sponsor. The accompanying decision memo elucidates that 45 C.F.R. § 410.1202(c) requires a suitability assessment to include all necessary steps to determine the potential sponsor's ability to provide for the child's physical and mental well-being, which is a statutory requirement, (*see* 8 U.S.C. § 1232(c)(3)(A)). This includes verifying the employment, income, or other information provided by the potential sponsor as evidence of their capacity to support the child. [Exhibit D]. Additionally, in the state child welfare system, parents, legal guardians, and close kin must demonstrate their financial capability to support a child's needs if the child is returned to their care. By requiring the submission of proof of income information and supporting documentation, case managers and Federal Field Specialists ("FFS") will be better equipped to identify potential indicators of labor trafficking or labor exploitation. The Office on Trafficking in Persons has identified instances where parents and other family members have been subjected to human trafficking and/or labor exploitation and had similar debts as the children they sponsored.

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[4] On May 15, 2025, FG 27 was updated to address the following process matters:

- Clarifying that the DNA Diagnostic Center ("DDC"), not Point Comfort Underwriters ("PCU") issues a reference number for DNA results;
- Directing case managers to email DDC when a child with pending DNA test results transfers to another ORR facility;
- Directing care providers to complete and send Treatment Authorization Request to PCU, then submit approved TAR to DDC according to DNA Testing Instructions;
- Clarifying that appointments may take between 5-7 days to schedule.

The information obtained during employment and income verification can inform the safety assessment, safety planning, and the appropriate level of Post-Release Services to recommend.

30. In amending the aforementioned policies concerning sponsor vetting, ORR thoroughly considered Category 1 sponsor's interests in family unity. As a result, as it relates to the updated list of acceptable documents to establish sponsor identity, ORR permits deviations, such as an exception, from the published list in § 2.2.4 for Category 1 sponsors on a case-by-case basis. UACB Policy Guide § 2.2.4. However, Category 1 sponsors who are unable to provide an acceptable proof of identification or address or have household members who are unable to do so and are seeking an exception must undergo additional vetting measures to adequately assess the safety and suitability of the sponsor's home. *Id*.

31. ORR conducts a suitability assessment of the potential sponsor, including a review of the sponsor's strengths, resources, risk factors, and special concerns within the context of each child's needs, strengths, risk factors, and relationship to the sponsor. *See* 45 C.F.R. § 410.1202. Additionally, home studies, which consist of interviews, a home visit, and a written report containing the home-study case worker's findings, are performed. *See* 45 C.F.R. § 410.1204; UACB Policy Guide § 2.4.2.

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

adjudicates completed sponsor applications within 10 calendar days of receipt for Category 1 sponsors. *Id*.

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

34. Where ORR denies release to a potential sponsor who is a parent or legal guardian or close relative (Category 1 or 2 sponsor), ORR provides the sponsor with a written Notification of Denial letter that includes an explanation of the reason(s) for the denial, the evidence and information supporting ORR's denial, and an overview of their right to examine evidence and seek an appeal. 45 C.F.R § 410.1205(c).

35. In making placement decisions, HHS "may consider danger to self, danger to the community, and risk of flight." 8 U.S.C. § 1232(c)(2)(A). If the sole reason for the denial of release is a concern that the UAC is a danger to self or others, ORR shall send the UAC and their counsel (if represented by counsel) a copy of the Notification of Denial letter provided to the sponsor and the child may seek an appeal of the denial. 45 C.F.R § 410.1205(f).

36. Separately, 45 C.F.R. § 410.1903 provides for risk determination hearings before an independent HHS hearing officer to determine, through a written decision, whether the unaccompanied alien child would present a risk of danger to the community if released. The answer to that question may affect the type of facility ORR would place a child in, as well as whether ORR is able to release a child to a sponsor (or the level of post-release services given to the child). All UAC in restrictive placements based on a finding of dangerousness are automatically placed

in such hearings, unless the UAC indicates in writing that they refuse such hearing. 45 C.F.R. § 410.1903(a). UAC placed in restrictive settings shall receive a written notice of the procedures. *Id*. Additionally, all other UAC in ORR custody may request a hearing to determine, through written decision, whether the UAC would present a risk of danger to self or to the community if released. 45 C.F.R. § 410.1903(b). However, "[d]eterminations made under [45 C.F.R. § 410.1903] will not compel an unaccompanied child's release; nor will determinations made under [45 C.F.R. § 410.1903] compel transfer of an unaccompanied child to a different placement. Regardless of the outcome of a risk determination hearing or appeal, an unaccompanied child may not be released unless ORR identifies a safe and appropriate placement pursuant to [45 C.F.R. §§ 410.1200-1210]; and regardless of the outcome of a risk determination hearing or appeal, an unaccompanied child may only be transferred to another placement by ORR pursuant to requirements set forth at [45 C.F.R. §§ 410.1100-1109 and 45 C.F.R. §§ 410.1600-1601]." 45 C.F.R. § 410.1903(j).

37. ORR does not have a re-referral policy for children who are referred again to ORR by DHS after a previous release. Instead, ORR applies the same requirements (as described in regulations and sub-regulatory guidance) as to release for all UAC in its custody, including to the named plaintiffs in this litigation. Thus, the only applicable policies for re-referrals are contained within 45 C.F.R. §§ 410.1200-410.1210.

38. However, ORR is in the process of reviewing cases of children re-referred, by another federal agency, in the interior United States who had previously been in the custody of a parent or legal guardian in the United States and where that same parent or legal guardian is again seeking to sponsor the child. ORR requires background checks of all sponsors including sponsors of children re-referred to custody. ORR will determine as part of this review of re-referred cases,

whether the results of these background checks reveal the parent or legal guardian may be unfit or a danger to the child, such that additional vetting may be required in line with ORR's process for vetting new sponsors.

39. The timeframes proposed by plaintiffs in the Proposed Order Granting Plaintiffs' Motion for a Preliminary Injunction to review these cases would be presumptively burdensome. The proposed timeline fails to consider that ORR often does not learn that there may be a parent or legal guardian in the United States if the UAC does not disclose this information immediately. Further, ORR must conduct a dangerousness assessment at the initial intake stage and prior to placement, based on the circumstances of the child's apprehension and re-referral.

40. Additionally, the hearing mechanism proposed by Plaintiffs in the Proposed Order Granting Plaintiffs' Motion for a Preliminary Injunction is problematic as ORR does not have access to a neutral and detached decision maker. Instead, ORR would need to enter into Inter Agency Agreements ("IAAs") to work with the Department Appeals Board ("DAB") to set up these hearings. While ORR has previously entered into IAAs with the DAB to provide regulatorily required hearings for ORR matters, ORR does not believe it can expand the DAB's scope without entering into a new IAA.

ORR Care Provider Facility Types and Conditions

41. ORR's regulation at 45 C.F.R. § 410.1102 establishes that ORR may place UAC in settings such as shelters, group homes, individual family homes, heightened supervision facilities, and secure facilities according to the needs of each child as required by 45 C.F.R. § 410.1103.

42. All standard programs and secure facilities must meet the minimum standards under 45 C.F.R. § 410.1302, meaning that all standard programs and secure facilities must provide children in their care, among other things, proper physical care and maintenance, individual needs

assessments, educational services appropriate to each child's level of development, opportunities for recreation and leisurely activities, individual counseling, and visitations and contact with family. *See also* UACB Policy Guide § 3.3.

43. ORR's regulation at 45 C.F.R. § 410.1001 defines "standard program" as

> any program, agency, or organization that is licensed by an appropriate State agency to provide residential, group, or transitional or long-term home care services for dependent children, including a program operating family or group homes, or facilities for unaccompanied children with specific individualized needs; or that meets the requirements of State licensing that would otherwise be applicable if it is in a State that does not allow state licensing of programs providing care and services to unaccompanied children.

44. As stated in UACB Policy Guide § 1.4.3, some children may stay in ORR custody for four months or more, and those children would be considered for long-term care placement in accordance with the criteria set out under UACB Policy Guide § 1.2.6.

Plaintiffs' Case Statuses

45. Diego N. is a fourteen-year-old national of [redacted] He is currently placed at [redacted] He was first admitted to ORR care on October 19, 2024, and discharged on October 22, 2024, to his father. He was admitted to ORR for a second time on November 6, 2025, after being referred again by CBP upon an encounter where he was traveling with a friend near the Rio Grande River with no parent or legal guardian present. At the time of his encounter with CBP, Diego N. admitted to being a scout for alien smuggling, though he later denied making that statement to CBP to ORR staff. On November 6, 2025, ORR identified Diego N.'s father as his potential sponsor and made direct contact. On November 11, 2025, Diego N.'s father submitted Diego N.'s birth certificate for authentication with the [redacted] consulate. On November 12, 2025, Diego N.'s father uploaded the sponsor application to ORR and scheduled his fingerprinting appointment. On November 19, 2025, Diego N.'s father submitted his

fingerprints and was cleared. On November 28, 2025, the [redacted] consulate confirmed the authenticity of Diego N.'s birth certificate. However, as a matter of policy, ORR still requires a DNA test and identity verification, even for Category 1 sponsors, as Diego N.'s birth certificate, although authentic, does not contain photographs of the parents. It is therefore imperative for ORR to confirm not only that the document is authentic but also that the sponsor is who is on the birth certificate and that the relationship is confirmed via DNA testing. On December 17, 2025, ORR commenced a home study for Diego N. due to Diego N.'s criminal history while in his father's care, history of controlled substance use while in his father's care, history of inappropriate contact with an adult while in his father's care, and history of making gang-related comments and drawings while in ORR care. The home study focused on all aspects of Diego N.'s home, and was essential to assess whether concerning behavioral or safety concerns stemmed from Diego's home life. Additionally, in Diego N's case, the caseworker conducted family counselling sessions to ensure that his father would be better equipped to care for Diego N. On December 30, 2025, ORR completed Diego N.'s home study and a positive recommendation was made. On January 18, 2026, ICE informed ORR that Diego N.'s case has been administratively closed and that ORR may proceed with standard release. On January 29, 2026, ORR contacted Diego N.'s father to let him know that his DNA appointment, identity verification, and additional vetting are still pending. On February 6, 2026, Diego N.'s father was cleared on his internet criminal and sex abuse checks. On February 24, 2026, ORR informed Diego N.'s father of the requirement that he provide his taxpayer identification number/social security number and that his DNA appointment is still pending scheduling by ORR. No denial has been issued to Diego N.'s father as of March 4, 2026.

46. Renesme R. is a sixteen-year-old national of [redacted] She is currently placed at [redacted] She was first admitted to ORR care on November 28, 2023, and

discharged on December 4, 2023, to her father. She was admitted to ORR for a second time on November 9, 2025, after being referred by ICE upon an encounter where she was traveling with a male friend with no parent or legal guardian present in [redacted] during an ongoing DHS immigration enforcement operation. On November 9, 2025, ORR contacted Renesme R.'s potential sponsor who purported to be her paternal aunt. The potential sponsor agreed to commence the family reunification process with Renesme R. On December 22, 2025, ORR contacted Renesme R.'s paternal aunt to request required documents and information for sponsorship application. On January 13, 2026, Renesme R. was informed that her aunt had recently completed the sponsorship application; however, several other elements are still pending, such as submittal of proof of address, proof of income, fingerprinting results, home study results, and in-person verification of identity documents. On February 3, 2026, Renesme R. was informed that those outstanding items are still pending. On February 26, 2026, Renesme R.'s aunt indicated to ORR that she will withdraw her sponsorship application and that Renesme R.'s father will instead move forward as sponsor. On March 2, 2026, Renesme R.'s aunt's sponsorship withdrawal was recommended by her ORR case manager and ORR proceeded to commence the sponsorship process with her father with his agreement. No denial has been issued to Renesme R.'s father as of March 4, 2026.

47. Mario C. is a seventeen-year-old national of [redacted] He is currently placed at [redacted] He was first admitted to ORR care on December 2, 2023, and discharged to his mother on December 14, 2023. Mario C. was cited on November 17, 2025, for theft (stolen vehicle) by local law enforcement, who referred him to ICE. ICE then referred Mario C. to ORR on November 24, 2025, and he was admitted to ORR care for a second time on November 25, 2025. On November 26, 2026, ORR made initial contact with Mario C.'s potential sponsor, his

mother, to discuss the reunification process. Mario C.'s mother initially declined to proceed with the sponsorship application after being informed of the requirements. Between November of 2025 and February of 2026, ORR had several conversations with Mario C.'s mother about sponsorship. During each conversation, Mario C.'s mother declined to sponsor Mario C. Mario C. was informed that his mother confirmed her interest in sponsorship but had declined sponsorship due to the requirements. On February 23, 2026, Mario C.'s mother identified a new sponsor who she alleged was her third cousin, and provided his name and phone number to ORR on February 24, 2026. ORR informed Mario C. on February 25, 2026, that his mother was able to identify her third cousin as a potential sponsor. On March 2, 2026, ORR contacted the potential sponsor to conduct sponsor identification and an initial screening. That same date, the intake specialist provided an orientation and reviewed the required supporting documentation for reunification with the proposed sponsor. On March 3, 2026, the potential sponsor indicated Mario C. is a distant relative and the proposed sponsor is from [redacted] However, the sponsor then confirmed during the same conversation that he is neither related to child's mother nor from [redacted] Instead, he stated that he knows Mario C. because Mario C. worked at his restaurant, and Mario C.'s mother requested sponsorship as a favor. That same date, the potential sponsor completed and signed the Authorization for Release of Information ("ARI"), and his identification, selfie, and ARI were uploaded into the portal. ORR spoke with Mario C.'s mother on March 3, 2026, who indicated ORR is asking her to complete a DNA test to confirm the relationship between her and the potential sponsor. Mario C.'s mother indicated she is unable to provide DNA because she and the proposed sponsor are unrelated; specifically, they are not related by blood but have known each other for a long time and treat each other like family. On March 5, 2026, ORR contacted the initial proposed sponsor, Mario C.'s mother, to revisit sponsorship and discussed the reunification process. Mario

C.'s mother confirmed interest in proceeding and her birth certificate and identification were submitted for authentication. No denial has been issued for any Sponsor Application for Mario C. as of March 6, 2026

48. Benito S. is a seventeen-year-old national of [redacted] He is currently placed at [redacted] He was first admitted to ORR care on July 17, 2023, and discharged to his aunt on August 13, 2023. He was admitted to ORR care for a second time on December 18, 2025, after local law enforcement cited him for driving without a license and following too close. ICE was contacted to verify Benito S.'s immigration status. After Benito S. posted bond, he was transported to ICE for processing, where ORR's referral notes indicate he stated he has no legal guardian in the United States, but reported he had been residing with his aunt. On December 19, 2025, ORR spoke with Benito S.'s aunt regarding the Sponsorship Application. Benito S.'s aunt communicated she will not be able to sponsor Benito S. due to financial and limiting circumstances, and further stated she consulted with family friends to see if anyone is willing to sponsor Benito S., and at this time, there was no identified sponsor. ORR again spoke with Benito S.'s aunt on December 20, 2025, regarding identifying possible sponsors. Benito's aunt expressed understanding of the requirements and indicated that she has not been able to identify any family members or family friends that may have the acceptable documents. On December 24, 2025, Benito S. expressed interest in speaking with his Legal Service Provider about Long Term Foster Care. On January 7, 2026, Benito S. expressed interest in speaking with a friend and his client manager indicated he would elevate this request and report back. On January 14, 2026, Benito S. was told he could not speak with his friend, as the friend is not an approved contact. Benito S. asked if his friend could sponsor him and ORR informed Benito S. that this issue would need to

be staffed as the contact information is in Benito S.'s possession, not his mother's. On January 19, 2026, ORR met with Benito S. and let him know that Long Term Foster Care preferred placements were going to be discussed with his Legal Service Provider. Additionally, Benito S. was informed that he and a staff member could go into his property to retrieve the phone number for his friend and then the call would need to be screened. Benito S. then refused the call after learning it would need to be screened. On January 21, 2026, Benito S. confirmed that he wanted to proceed with Long Term Foster Care and no longer wanted to pursue the request to speak to his friend or have his friend sponsor him. ORR informed Benito S, on January 28, 2026, that it was approved to continue with the Long Term Foster Care application and ORR would be compiling the necessary information. On February 4, 2026, Benito S. was again informed that ORR was compiling all required documents for the Long Term Foster Care application. Benito S. was informed of the updates regarding compiling documents for Long Term Foster Care on February 11, 2026. On February 19, 2026, the Long Term Foster Care packet was sent and Benito S. was informed. Benito S. was informed that the Long Term Foster Care packet is submitted and is pending approval and response on February 26, 2026. On March 3, 2026, Benito S. received two preplacement offers for Long Term Foster Care, and the preplacement interviews were scheduled for March 3, 2026, and March 4, 2026. Benito S. participated in both preplacement interviews. On March 5, 2026, ORR met with Benito S.; Benito S. informed ORR that he would like to accept the Long-Term Foster Care placement offer at [redacted] was notified of Benito S.'s acceptance of the offer for placement that same day. Benito S. was admitted to [redacted] on March 10, 2026. There is no active sponsor application pending for Benito, so no denial has been issued for any Sponsor Application for Benito as of March 10, 2026.

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

Dated: March 10, 2026 **Washington, D.C.**

TOBY R. BISWAS -S

Digitally signed by TOBY R. BISWAS -S
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Toby Biswas
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