[NOT YET SCHEDULED FOR ORAL ARGUMENT]
No. 26-5157

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Diego N., et al.,
Plaintiffs-Appellants,
v.

United States Department of Health and Human Services,
et al.,
Defendants-Appellees,

On Appeal from the United States District Court
for the District of Columbia
No. 26-cv-0577
Hon. Carl J. Nichols, U.S. District Judge

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

I. Parties

A. Parties Appearing Below

1. Diego N. (proceeding under pseudonym), *Plaintiff-Appellant*.
2. Renesme R. (proceeding under pseudonym), *Plaintiff-Appellant*.
3. Mario C. (proceeding under pseudonym), *Plaintiff-Appellant*.
4. Benito S. (proceeding under pseudonym), *Plaintiff-Appellant*.
5. U.S. Department of Health and Human Services, *Defendant-Appellee*.
6. Robert F. Kennedy Jr., *Defendant-Appellee*.
7. Office of Refugee Resettlement, *Defendant-Appellee*.
8. Angie Salazar, Defendant-Appellee.

B. Parties Appearing in this Court

1. Diego N. (proceeding under pseudonym), *Plaintiff-Appellant*.
2. Renesme R. (proceeding under pseudonym), *Plaintiff-Appellant*.
3. Mario C. (proceeding under pseudonym), *Plaintiff-Appellant*.
4. Benito S. (proceeding under pseudonym), *Plaintiff-Appellant*.
5. U.S. Department of Health and Human Services, *Defendant-Appellee*.

6. Robert F. Kenedy Jr., *Defendant-Appellee*.

7. Office of Refugee Resettlement, *Defendant-Appellee*.

8. Angie Salazar, Defendant-Appellee.

II. Rulings Under Review

The ruling under review in this case is United States District Court Judge Carl J. Nichols' April 30, 2026 Memorandum Opinion (Dkt. 43) and the accompanying Order (Dkt. 44) denying Plaintiffs' motion for a preliminary injunction. *See* Joint Appendix ("J.A.") 11-36.

III. Related Cases

This case has not previously been filed with this Court or any other court. Counsel for Plaintiffs-Appellants are unaware of any other related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C).

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GLOSSARY OF ABBREVIATIONS

APA	Administrative Procedure Act
DAB	Departmental Appeals Board
DHS	United States Department of Homeland Security
HHS	United States Department of Health and Human Services
HSA	Homeland Security Act of 2002
HSI	Homeland Security Investigations
IAAS	Inter Agency Agreements
ICE	Immigration and Customs Enforcement
JROTC	Junior Reserve Officers' Training Corps
ORR	Office of Refugee Resettlement
TVPRA	Trafficking Victims Protection Reauthorization Act of 2008
UAC	Unaccompanied Alien Child

INTRODUCTION

Federal law provides for undocumented children who arrive in the United States unaccompanied by a parent or legal guardian to be released to an approved sponsor, usually a parent or close relative, pending resolution of their immigration case. The Office of Refugee Resettlement ("ORR"), a subagency within the Department of Health and Human Services ("HHS"), vets each sponsor before placement.

Plaintiffs-Appellants are four children who lived with their ORR-approved sponsors in the United States. Beginning in 2025, Plaintiffs and hundreds of other similarly situated children were re-detained by the Department of Homeland Security ("DHS") and transferred back to ORR custody, in many cases without clear justification for their detention. DHS lacks any statutory authority over ORR's decision to place a child with a sponsor. But ORR nevertheless adopted a blanket policy of treating DHS arrests as automatically revoking ORR's prior sponsorship approval, regardless of whether the arrest raises any concerns related to the sponsor's fitness. Re-arrested children are then forced to remain detained in ORR custody—separated from their families, schools, and communities—while their parents or other previously approved sponsors

repeat a lengthy application process. Children as young as eight years old have been separated from their parents for six months or more.

Plaintiffs sued on behalf of a putative class to challenge this unreasoned blanket reapplication policy. Plaintiffs moved for a narrowly tailored preliminary injunction that would require only that ORR make individualized determinations based on the particular facts of each's child's case prior to revoking a child's sponsorship approval, and that it provide minimum due process protections.

Despite finding that Plaintiffs were suffering irreparable harm in the form of prolonged detention and family separation, the district court denied relief based on the mistaken conclusion that Plaintiffs are unlikely to prevail on the merits. In fact, ORR's arbitrary policy, adopted without any reasoned justification, fails to satisfy the minimum requirements of the Due Process Clause and further violates the Administrative Procedure Act ("APA"). Injunctive relief is desperately needed pending review of ORR's harmful and unlawful policy.

JURISDICTIONAL STATEMENT

The district court had jurisdiction of this matter under 28 U.S.C. § 1331. The district court denied a preliminary injunction on April 30,

2026. J.A.11. Plaintiffs filed a notice of appeal on May 8, 2026. J.A.9-10. This Court has jurisdiction under 28 U.S.C. § 1292(a)(1).

STATEMENT OF ISSUES

1. Whether Plaintiffs are likely to succeed in showing that Defendants' blanket reapplication policy violates the Due Process Clause.

2. Whether Plaintiffs are likely to succeed in showing that Defendants' blanket reapplication policy is contrary to law and arbitrary and capricious, in violation of the APA.

3. Whether the district court erred in denying a preliminary injunction.

STATUTES AND REGULATIONS

Pertinent statutes and regulations are reproduced in an addendum to this brief.

STATEMENT OF THE CASE

I. ORR's Statutory Mandate and Regulations

In the Homeland Security Act ("HSA") of 2002, Congress transferred responsibility for the placement, custody, and release of unaccompanied children from the former Immigration and Naturalization Service to ORR. 6 U.S.C. § 279. In 2008, Congress enacted the Trafficking Victims Protection Reauthorization Act ("TVPRA"),

reinforcing ORR's exclusive authority over the placement of unaccompanied children by requiring all other federal agencies to transfer these children to HHS custody within 72 hours, absent "exceptional circumstances." 8 U.S.C. § 1232(b)(3).

Once a child is in ORR custody, the TVPRA requires that the child "shall be promptly placed in the least restrictive setting that is in the best interest of the child," usually with "a suitable family member." 8 U.S.C. § 1232(c)(2)(A). ORR's governing regulations—the Foundational Rule—require that absent specific safety or flight risk concerns, "ORR shall release a child from its custody without unnecessary delay" to a suitable sponsor, with preference to a parent, legal guardian, or adult relative. 45 C.F.R. § 410.1201(a). DHS has no authority to change or revoke ORR's placement determinations. *See* 8 U.S.C. § 1232(b)(1), (b)(3), (c)(2)(A); 6 U.S.C. § 279(b)(1)(C), (D).

ORR emphasizes in the Foundational Rule that it is a child welfare agency, *not* an immigration enforcement agency. Preamble to Unaccompanied Children Program Foundational Rule, 89 Fed. Reg. 34399, 34402-03, 34442-43, 34452, 34568. ORR also "reiterates its strong belief . . . that placement with a vetted and approved family member or

other vetted and approved sponsor, as opposed to continued placement in an ORR care provider facility, is generally in the best interests of unaccompanied children whenever feasible." *Id.* at 34440.

II. Re-detention of Children in ORR Custody

After ORR approves a sponsorship application and releases a child pursuant to the TVPRA, ORR may provide the child with post-release services and is required to provide such services to certain categories of children under the TVPRA. 8 U.S.C. § 1232(c)(3)(B); 45 C.F.R. § 410.1210. Regardless of whether a child receives post-release services, they are free to live with their families in the community, attend school and church, participate in extra-curricular activities, make friends, and experience a normal childhood while they await completion of their immigration proceedings.

ORR has disclaimed continuing custodial authority over children after they are released. *See* 89 Fed. Reg. at 34452; *see also id.* at 34399 (ORR "would not go out into the community to take custody of any child."). When ORR has concerns regarding the suitability of a sponsor post-release, it has, in the past, "coordinat[ed] with state welfare agencies" rather than reassuming custody. *Saravia v. Sessions*, 280 F.

Supp. 3d 1168, 1198 n.15 (N.D. Cal. 2017). Previously, children rarely re-entered ORR custody following an approved release and ORR's procedures are therefore not designed for re-referred children. *See* Declaration of Alexa L. Sendukas ¶ 5, J.A. 75-76 ("Sendukas Decl."); Declaration of Marion Donovan-Kaloust ¶ 4, J.A.81-82 ("Donovan-Kaloust Decl.").

In 2017, as part of a targeted Immigration and Customs Enforcement ("ICE") operation, numerous children previously released from ORR custody were rearrested on allegations of gang affiliation, re-referred to ORR custody, and detained in facilities across the country, including in California. *See Saravia*, 280 F. Supp. 3d at 1178-79. Several children sued on behalf of a putative class of unaccompanied children rearrested on gang allegations, alleging procedural due process and other legal violations. *Id.* at 1181. ORR treated these children as if they were new arrivals and required they remain in custody while their sponsors repeated the sponsor application process. *Id.* at 1198. After finding a likely due process violation, the district court issued a preliminary injunction requiring the government to provide hearings within seven days of rearrest to determine whether the child was a danger to the

community and, if not, to release the child to the previously approved sponsor. *Id.* at 1205-06. The court rejected the government's argument that the TVPRA requires a reassessment of a previously approved sponsor every time a child re-enters ORR custody. *Id.* at 1198. The Ninth Circuit affirmed. *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); *see also id.* at 1143 ("Nothing in the TVPRA requires the government to conduct this [sponsor suitability] review a second time.").

In 2025, DHS began referring hundreds of previously released children back to ORR. *See* Transcript of Preliminary Injunction Hearing at 63:1-6, J.A.268 ("PI Hearing Transcript") (Defendants' counsel stated that "about 500" children were re-referred to ORR custody since January 2025). This time, re-referrals are largely not because of alleged gang affiliation. Rather, *any* interaction with DHS can lead to a child's re-referral to ORR, including traffic stops, compliance with immigration appointments, or even chance encounters. *See, e.g.,* Declaration of Renesme R. ¶ 8, J.A. 51 ("Renesme Decl.") (detained without explanation after driving home from laundromat); Sendukas Decl. ¶ 5, J.A. 75-76; *E.F.E.L. v. Noem, et al.*, No. 26-cv-02507, 2026 WL 1045550, at *2 (N.D. Ill. Apr. 17, 2026) (released child re-detained with "zero justification");

A.N.P.S. v. Salazar, No. 25-cv-14778, 2025 WL 3707333, at *5 (N.D. Ill. Dec. 22, 2025) (same).

Children who spent years with their parents or other family and began building their lives in the United States have unexpectedly found themselves back in ORR custody. *See* Renesme Decl. ¶¶ 2-3, J.A.50; Declaration of Benito S. ¶¶ 2-3, J.A.68 ("Benito Decl."); Sendukas Decl. ¶ 8, J.A.77; *see also* Declaration of C.A.C.C. ¶¶ 2, 7, 11, J.A.86-87 ("C.A.C.C. Decl.") (eight-year old boy re-detained after being released to mom two years ago); Declaration of J.M.P.V. ¶¶ 2, 4, J.A.92 ("J.M.P.V. Decl.") (sixteen-year-old boy living with father for past five years before return to ORR custody).

Regardless of a child's individual circumstances, ORR requires *all* previously approved sponsors to restart the application process. *See* Sendukas Decl. ¶ 5, J.A.75-76; Donovan-Kaloust Decl. ¶ 4, J.A.81-82. Children currently spend, on average, over six months in ORR custody prior to discharge. *See* Data, Office of Refugee Resettlement, *Average Monthly Data* (current as of May 20, 2026), https://perma.cc/TA2J-XXU7.

Had these children been accused of gang affiliation, they would, until recently, have had the right to a prompt hearing to determine

whether they could immediately return to their previously approved sponsor.[1] But children re-referred to ORR for any other reason—including no reason at all—lack any such protections.

III. Obstacles to Reunification with Sponsors

To fulfill its statutory and regulatory obligations to promptly release children to suitable sponsors, ORR created a sponsor application process. Sponsors must provide proof of their identity and relationship with the child and undergo background checks. 45 C.F.R. § 410.1202(b); *see also* ORR, Unaccompanied Alien Children Bureau Policy Guide ("Policy Guide") § 2, https://perma.cc/8EJU-YH9D.

Beginning in 2025, ORR changed its sponsorship requirements in numerous ways that have made it difficult and, in some cases, impossible for even previously approved sponsors to successfully repeat the application process. For example, ORR narrowed the types of documents

[1] In 2020, the parties in *Saravia* reached a settlement outlining procedures for hearings for class members rearrested based on alleged gang affiliation. *See* Settlement Agreement and Release, *Saravia v. Garland*, No. 3:17-cv-03615, ECF 237-1 (N.D. Cal. Sep. 17, 2020); Order Certifying the Settlement Class and Granting Final Approval of Class Action Settlement, *Saravia* v. *Barr,* No. 3:17-cv-03615, ECF 249 (N.D. Cal. Jan. 19, 2021). The settlement was in effect until January 2026. *See Saravia v. Garland,* No. 3:17-cv-03615, ECF 269 (N.D. Cal. June 3, 2024).

it will accept as proof of sponsor identification and now generally requires a form of identification issued within the United States.[2] For instance, ORR now requires proof of work authorization before it will accept a foreign passport as identification. Policy Guide § 2.2.4. Although there are case-by-case exceptions for parents or legal guardians, these exceptions are purely discretionary and trigger additional vetting requirements. *Id.*

Since March 2025, ORR also now requires DNA testing of the child and sponsor in every case where a sponsor claims a biological relationship with the child, even if the agency has previously determined a biological relationship exists. *See* Office of Refugee Resettlement, Field Guidance #27 ("FG-27"): DNA Testing Expansion (Mar. 14, 2025), https://perma.cc/67MF-ELB8. In addition, sponsors must now attend an in-person appointment to present their identification and other documentation to an ORR official, often at a DHS-Homeland Security

[2] A different district court issued a preliminary injunction prohibiting ORR from applying these new identification requirements to children who entered ORR custody on or before April 22, 2025. *Angelica S. v. HHS*, 786 F. Supp. 3d 158, 168, 176, 179 (D.D.C. 2025). But ORR continues to apply these requirements to re-referred children. *See, e.g.*, Declaration of Mario C. ¶¶ 13-14, J.A.61-62; Benito Decl. ¶ 10, J.A.69. The legality of these documentation requirements are not at issue in this case.

Investigations ("HSI") field office. *See* Office of Refugee Resettlement, Field Guidance # 24 – ORR Division of Sponsor Administration Role Guidance 16-19 (revised 1/26/2026), https://perma.cc/BTT2-N43M. Sponsors have waited months for ORR to provide an appointment for DNA testing and ID verification. Declaration of Diego N. ¶¶ 5, 8-10, J.A.40-41 ("Diego Decl."); Declaration of Toby Biswas ¶ 45, J.A.114-15 ("March Biswas Decl."); J.M.P.V. Decl. ¶¶ 4, 6-7, J.A.92-93.

In addition to imposing new requirements on sponsors, ORR has increased its information-sharing with DHS. Numerous sponsors have been detained by DHS because of their participation in the sponsorship process, including sponsors detained at identification verification appointments held at HSI offices. Sendukas Decl. ¶ 7, J.A.76-77; Donovan-Kaloust Decl. ¶ 6, J.A.83. If a sponsor is detained during their application process, the child must restart the entire process with a new sponsor, leading to prolonged detention as well as severe emotional distress. *See* Sendukas Decl. ¶ 7, J.A.76-77.

IV. Conditions in ORR Facilities

Although children are now detained for much longer periods of time, most ORR programs remain designed for short-term stays.[3] Defendants have not contested that children in ORR shelters generally cannot attend public school or earn academic credit and instead receive only basic instruction intended for recently arrived children. *See* Diego Decl. ¶ 13, J.A. 41; Declaration of Mario C. ¶ 15, J.A. 62 ("Mario Decl."); Renesme Decl. ¶ 14; J.A. 52 J.M.P.V. Decl. ¶ 11, J.A. 94.

Life in ORR's congregate care programs is highly regulated, with a set schedule and extremely limited opportunities to leave the facility, pursue extracurricular interests, or interact with the broader community. Renesme Decl. ¶ 14, J.A.52; Benito Decl. ¶¶ 12-13, J.A.69. Even in shelter placements, officially ORR's least restrictive congregate care placement, children's movements are restricted and they are subject to constant staff supervision. Diego Decl. ¶ 12, J.A. 41; Mario Decl. ¶¶ 15, 17, J.A.62.

[3] The only ORR program designed for longer-term custody is Long-Term Foster Care. *See* Policy Guide, Guide to Terms, *Long Term Foster Care,* https://perma.cc/MRB2-HZ8S. Placement in this program is generally available only to children who lack a viable sponsor. *See* Policy Guide § 1.2.6, https://perma.cc/FRE5-5YAZ.

Children are also deprived of the in-person expressions of love and care that come with living with family and being with friends. Hugging or even touching other children, is often prohibited. Renesme Decl. ¶ 14, J.A.52; J.M.P.V. Decl. ¶ 10, J.A.93. In-person visitation with family is limited and, in many cases, infeasible because children are detained far from home. Renesme Decl. ¶ 15, J.A.52; Mario Decl. ¶ 9, J.A.61; Benito Decl. ¶¶ 5, 7, J.A.68; *see also* C.A.C.C. Decl. ¶ 10, J.A.87 ("I like when [my mom] can visit me, but then I feel so sad when she leaves again.").

When lengths of custody last peaked in 2018 and 2019 due to expanded fingerprinting requirements and sharing of fingerprint results with ICE, the HHS Office of Inspector General reported concerns from ORR facilities that "longer stays resulted in higher levels of defiance, hopelessness, and frustration among children, along with more instances of self-harm and suicidal ideation." Dep't of Health & Hum. Servs., Office of the Inspector Gen., Report No. OEI-09-18-00431, *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody* 4-5, 12-13 (Sep. 2019), https://perma.cc/98JU-49HK. At that time, the highest monthly length of custody was 93 days in November 2018. *Id.* at 13. As the average length of custody has now

reached double that previous high—to over 190 days—children are predictably experiencing significant mental health concerns and emotional distress. *See* ORR, *Average Monthly Data*, https://perma.cc/TA2J-XXU7; Sendukas Decl. ¶ 6, J.A.76 (prolonged detention "has caused increased instances of detention fatigue, mental health crises, and hospitalizations of the children in the facilities we [regularly] serve" and facility staff "have also expressed concern").

V. Named Plaintiffs

Diego N. entered the United States in 2024 and was released to his father, Alexis N., after Alexis completed a sponsorship application and was vetted and approved by ORR. Diego Decl. ¶ 2, J.A.39. Diego lived with his father, stepmother, and siblings near the U.S.-Mexico border in Texas and attended public school. *Id.* ¶¶ 3-4, J.A.39-40. In November 2025, when he was 14 years old, Diego was detained after Border Patrol officers stopped his friend's car. *Id.* ¶ 5, J.A.40.

Diego was transferred to an ORR shelter and Alexis was told he would have to reapply for sponsorship. *Id.* ¶¶ 7-9, J.A.40. Neither Diego nor Alexis were offered an opportunity to contest the revocation of Diego's approved sponsorship. *Id.* ¶¶ 7-9, 18, J.A.40-42. Alexis promptly re-

submitted a sponsorship application, had Diego's birth certificate authenticated by his consulate, passed a fingerprint-based background check, and completed a positive home study. Diego Decl. ¶¶ 8-9, J.A.40; March Biswas Decl. ¶ 45, J.A.114-15.

Despite verifying Alexis's identity and relationship with his son and approving him as a sponsor in 2024, ORR refused to release Diego until Alexis attended an in-person identification and DNA testing appointment. March Biswas Decl. ¶ 45, J.A.114-115. But as of March 10, 2026, ORR had not provided Alexis with this appointment. *Id.* On March 12, 2026, without ever providing the appointment it previously insisted was necessary, ORR released Diego to his father. Declaration of Toby Biswas ¶ 3, May 4, 2026, Dkt. 45-1 ("May Biswas Decl."); PI Hearing Transcript at 52:15-53:2, J.A.257-258.

Diego spent over four months detained in an ORR shelter, where he missed his family, his friends, and his school, and made no academic progress despite his father's best efforts to find a way for his son to earn academic credit while detained. Diego Decl. ¶¶ 13-16, J.A.41-42; *see also id.* ¶ 13 ("We have school here but I am not learning anything . . . they teach us how to read a clock and the names of fruits in English."). Diego

felt frustrated and uncomfortable in the restrictive environment of the shelter where he had no meaningful contact with the community, was subject to constant surveillance, and could not even "go outside for fresh air when I want to." *Id.* ¶¶ 11-12.

Renesme R. entered the United States in 2023 and was released by ORR to her father, Michael R., after ORR approved his sponsorship application. *See* Renesme Decl. ¶¶ 2-3, J.A.50. Renesme lived with her father and family in Tennessee, where she was a junior in high school participating in the Junior Reserve Officers' Training Corps ("JROTC") and hoped to one day enlist in the U.S. military. *Id.* ¶¶ 5, 14, J.A.50-52. In November 2025, at 16 years old, Renesme was re-detained by DHS without explanation after driving home with a friend from the laundromat. *Id.* ¶¶ 7-8, J.A.51; March Biswas Decl. ¶ 46, J.A.115-116.

Renesme was transferred to an ORR shelter in Texas and Michael was told he would have to begin the sponsorship application process anew. Renesme Decl. ¶¶ 9-10, J.A.51. Neither Renesme nor Michael were offered an opportunity to be heard regarding the revocation of Renesme's prior approved sponsorship. *Id.* ¶¶ 10, 17, J.A.51-53. Although Renesme desperately wanted to return home to her father, she was afraid her

father would be targeted for immigration enforcement if he repeated the sponsorship process and therefore made the difficult decision to pursue release to her aunt instead. *Id.* ¶¶ 11-13, 15, J.A.51-52.

Renesme felt "imprisoned and very closed in" at her ORR shelter, where children all follow the same routine, are rarely allowed on outings, and are not permitted to hug or even share food with their friends. *Id.* ¶ 14, J.A.42. Because ORR shelters do not offer academic credit, she feared she would have to repeat her junior year and would be unable to complete her three-year JROTC certificate. *Id.* In late February 2026, after the filing of this litigation, ORR offered Renesme's father an expedited sponsorship process and he submitted a sponsorship application. March Biswas Decl. ¶ 46, J.A.115-116; Memorandum Opinion at 5 n.2, J.A.16 ("Mem. Op."). After four months in detention, Renesme was released to her father on March 25, 2026. May Biswas Decl. ¶ 4, Dkt. 45-1.

Mario C. entered the United States in 2023 and was released to his mother. Mario Decl. ¶¶ 2-3, J.A.60. He lived with his mother and baby brother in Texas, where he attended public school. *Id.* ¶¶ 4-6, J.A.60. In November 2025, when he was 17 years old, Mario was arrested by local

police and transferred to ICE custody, who then transferred him to ORR. *Id.* ¶¶ 7-9, J.A.60-61. He felt bored and "always under surveillance" in ORR and missed his mom and baby brother. *Id.* ¶¶ 11, 15, 21, J.A.61-62.

Mario's mother attempted to re-apply for sponsorship but was informed that—even though ORR previously verified her identity and approved her as a sponsor—ORR would no longer accept her foreign passport as proof of identity and now requires identification issued within the United States. Mario Decl. ¶¶ 13-14. In early March 2026, after this litigation was filed, ORR encouraged Mario's mother to reapply for sponsorship and accepted her existing identification. March Biswas Decl. ¶ 47, J.A.116-118. On March 28, 2026, Mario was released to his mother. May Biswas Decl. ¶ 5, Dkt. 45-1.

Benito S. entered the United States in 2023 and was released by ORR to his aunt after she completed a sponsorship application and was vetted. Benito Decl. ¶¶ 2-3, J.A.68. He lived happily with his aunt and cousins in Louisiana for two and a half years. *Id.* ¶¶ 2-4. In December 2025, when he was 17 years old, Benito was arrested by local police after a minor traffic accident and transferred to ICE, who sent him to an ORR shelter in Texas. *Id.* ¶ 7. ORR informed Benito's aunt that she would have

to repeat the sponsorship process and, under ORR's new requirements, must provide a form of identification issued in the United States. *Id.* ¶ 10, J.A.69.

Because neither Benito's aunt nor other available family members could provide a U.S.-issued identification, Benito was forced to abandon his hopes of returning home to his family and instead apply for ORR long-term foster care. *Id.* ¶ 11, J.A.69; March Biswas Decl. ¶ 48, J.A.118-119. He has a congenital heart condition and experienced increased symptoms after re-entering ORR custody; his cardiologist said his condition is exacerbated by stress. Benito Decl. ¶ 9, J.A.69. On March 10, 2026, after three months in a shelter, Benito was transferred to a long-term foster care group home. March Biswas Decl. ¶ 48, J.A.118-119; May Biswas Decl. ¶ 6, Dkt. 45-1. He remains in ORR custody far from his family.

VI. Prior Proceedings

Plaintiffs filed their Complaint for Declaratory and Injunctive Relief and moved for class certification. Dkt. 1, 4, J.A.5. Plaintiffs seek certification of a putative class of all 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. Dkt. 4.

Plaintiffs moved for a preliminary injunction and provisional class certification. Dkt. 10, J.A.6, 12-13 & n.1. After holding a hearing, the district court issued an order, J.A.11, and opinion denying Plaintiffs' motion for a preliminary injunction, J.A.12-36, finding that Plaintiffs had shown irreparable harm, have legitimate liberty interests in family integrity, freedom from unwarranted imprisonment, and release under the TVPRA, but could not show "at this stage that their due process rights are sufficiently threatened to warrant the 'extraordinary remedy' of a preliminary injunction." Mem. Op. at 8-12, 24, J.A.18-23, 35-36. Additionally, the district court concluded that Plaintiffs are not likely to succeed on their APA claims because habeas is likely an alternative adequate remedy, ORR's reapplication policy is not likely contrary to law, and the Court cannot yet say "ORR's decision is likely so unreasonable that it constitutes arbitrary agency action." *Id.* at 15-23, J.A.26-34. The district court did not rule on the motion for class certification.

Plaintiffs noticed this appeal of the district court's denial of Plaintiffs' motion for a preliminary injunction. Dkt. 46, J.A.9-10.

SUMMARY OF ARGUMENT

This Court should reverse the district court's denial of a preliminary injunction because Plaintiffs are likely to succeed on the merits of their Due Process and APA claims, are suffering irreparable harm, and the balance of equities and public interest favor an injunction.

Plaintiffs have compelling liberty interests in family integrity and continued ability to live in the community under the TVPRA. Plaintiffs face an unacceptably high risk of erroneous deprivation because ORR previously vetted and approved their sponsors as suitable caregivers and then revoked that approval without any notice or opportunity to be heard. Contrary to the district court's suggestion, a new sponsorship application does not provide children constitutionally required process related to the central issue here—the *revocation* of their prior sponsor approval. Further, providing minimal due process protections is consistent with—and furthers—Defendants' asserted child welfare interests. Plaintiffs are therefore likely to succeed on their Due Process claim.

In addition to minimum procedural due process protections,

Plaintiffs request preliminary relief enjoining ORR from enforcing its blanket reapplication policy under the APA. This policy is contrary to the TVPRA and ORR's Foundational Rule and was adopted without reasoned analysis, without weighing the costs and benefits of the policy, and without consideration of children's reliance interests or less burdensome alternatives. Plaintiffs' requested relief on their APA claim—vacatur of ORR's unlawful policy—is unavailable in a petition for habeas corpus and habeas is therefore not an adequate alternative remedy.

As the district court acknowledged, Plaintiffs demonstrated irreparable harm through family separation and prolonged detention. A preliminary injunction is in the public interest because it furthers both parties' interests in protecting the best interests of children. Plaintiffs' modest request for a prompt determination of the need for a new sponsorship application and timely notice and opportunity to be heard is narrowly tailored to the specific legal violations shown here.

STANDARD OF REVIEW

This Court reviews "the district court's legal conclusions as to each of the four [preliminary injunction] factors *de novo*, and its weighing of them for abuse of discretion." *League of Women Voters of U.S. v. Newby*,

838 F.3d 1, 6 (D.C. Cir. 2016).

ARGUMENT

To obtain a preliminary injunction, a plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The balance-of-equities and public interest factors "'merge when,' as here, 'the Government is the opposing party.'" *Karem v. Trump*, 960 F.3d 656, 668 (D.C. Cir. 2020) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). The same standard applies to a request for preliminary relief under the APA, 5 U.S.C. § 705. *Gomez v. Trump*, 485 F. Supp. 3d 145, 168 (D.D.C. 2020). Plaintiffs have established each of these factors.

I. Plaintiffs Are Likely to Succeed on their Procedural Due Process Claim

ORR's policy of automatically revoking its prior sponsorship approval every time a child is rearrested by DHS—without notice or opportunity to be heard regarding the necessity of a new application—violates the Due Process Clause.

To determine what 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 v. Eldridge*, 424 U.S. 319, 335 (1976). "The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss.'" *Santosky v. Kramer*, 455 U.S. 745, 758 (1982) (quoting *Goldberg v. Kelly*, 397 U.S. 254, 262-263 (1970)).

All three factors weigh heavily in favor of requiring procedural protections here. Ripping children from their families, schools, and communities and detaining them in government institutions for weeks, months, or potentially indefinitely is unquestionably a "grievous loss." *Santosky*, 455 U.S. at 758. Plaintiffs and putative class members face an unacceptably high risk of erroneous deprivation because ORR has *no* procedures in place to determine whether a new sponsorship application

is necessary; it instead requires *all* sponsors to begin the sponsorship process anew regardless of individual circumstances. Nor would additional procedures unfairly burden the government. To the contrary, a prompt determination of whether a new sponsor application is necessary is likely to spare ORR resources it would otherwise expend in paying for the child's detention and repeating the sponsor vetting process with the same individual previously approved to care for the child.

A. Plaintiffs Have Compelling Liberty Interests

As the district court recognized, Plaintiffs have legitimate liberty interests in avoiding family separation and unnecessary detention. Mem. Op. at 8, J.A.19.[4] Plaintiffs' interests arise out of the fundamental right to family integrity, the right to freedom from unnecessary intrusions on their personal liberty, and their prior release under the TVPRA.

Congress mandated that ORR treat unaccompanied children in accordance with their best interests and promptly release them to

[4] Benito remains in ORR custody. Defendants' decision to release Diego, Renesme, and Mario does not moot their claims because they could still be subject to ORR's reapplication policy in the future. *See, e.g.,* Diego Decl. ¶ 17, J.A.42; *FBI v. Fikre*, 601 U.S. 234, 241, 243 (2024). Additionally, Diego, Renesme, and Mario can continue to serve as class representatives because Plaintiffs have a pending motion for class certification. *See J.D. v. Azar*, 925 F.3d 1291, 1308-11 (D.C. Cir. 2019).

suitable family members. 8 U.S.C. § 1232(c)(2)(A). The district court's suggestion that either Congress's power over immigration or Plaintiffs' status as noncitizen children diminishes their right to due process protections is unfounded.

"[T]he Due Process Clause applies to all 'persons' within the United States . . . whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see also, e.g., A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025); *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025). Plaintiffs were living with their families in the United States prior to their re-detention and the Fifth Amendment protects "every one of [them] from deprivation of life, liberty, or property without due process of law," regardless of immigration status. *Mathews v. Diaz*, 426 U.S. 67, 77 (1976).

1. Plaintiffs Have Well-Established Interests in Family Integrity

The right of children and their families to live together, free from unnecessary state interference, is deeply rooted in our constitutional order and "is an interest far more precious than any property right." *Santosky*, 455 U.S at 758-59. ORR's sponsor approval decisions, made

pursuant to its statutory child welfare mandate, implicate the core of the fundamental right to family integrity.

There is "little doubt that the Due Process Clause would be offended '[i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest.'" *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (quoting *Smith v. Org. of Foster Fams. For Equal. & Reform*, 431 U.S. 816, 862-63 (1977)); *see also Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion); *Santosky*, 455 U.S. at 760; *Stanley v. Illinois*, 405 U.S. 645, 657-58 (1972). Even temporary removal of children from their families creates cognizable injury because "if there is delay between the doing and the undoing [the parent] suffers from the deprivation of his children, and the children suffer from uncertainty and dislocation." *Stanley*, 405 U.S. at 647.

Just as parents have a right to the care and custody of their children, a child has a "corresponding right to protection from interference in the relationship [that] derives from the psychic importance to him of being raised by a loving, responsive, reliable adult."

Franz v. United States, 707 F.2d 582, 599 (D.C. Cir. 1983) at 760 ("[U]ntil the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship."); *Stanley*, 405 U.S at 657-58 (removing children from father without a hearing "needlessly risks running roughshod over the important interests of both parent and child").

The right to family integrity also encompasses children like Benito living with extended family caregivers. "The tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition" and "the choice of relatives in this degree of kinship to live together may not lightly be denied by the State." *Moore v. City of E. Cleveland*, 431 U.S. 494, 504-06 (1977) (plurality opinion); *see also Roberts v. U.S. Jaycees*, 468 U.S. 609, 618-20 (1984) (recognizing constitutional significance of "cohabitation with one's relatives"); *Prince v. Massachusetts*, 321 U.S 158, 159, 166 (1944) (analyzing rights of child's "aunt and custodian" as if they were parental rights).

Although the district court suggested generally that Plaintiffs' liberty interests "are limited by their status" as undocumented children,

Mem. Op. at 8-9, J.A. 19-20, the court did not explain how this was relevant, if at all, to Plaintiffs' family integrity interest. Courts have uniformly held that children in ORR custody have cognizable liberty interests in family integrity, even when seeking *initial* release to a family member. *See D.B. v. Cardall*, 826 F.3d 721, 740 (4th Cir. 2016); *Lucas R. v. Becerra*, No. 18-cv-5741, 2022 WL 2177454, at *25 (C.D. Cal. March 11, 2022); *J.E.C.M. v. Lloyd*, 352 F. Supp. 3d 559, 585 (E.D. Va. 2018); *Santos v. Smith*, 260 F. Supp. 3d 598, 608-12 (W.D. Va. 2017); *see also Jacinto-Castanon de Nolasco v. U.S. Immigr. & Customs Enf't*, 319 F. Supp. 3d 491, 501 (D.D.C. 2018) (analyzing liberty interest of parent of children in ORR custody). Children previously living with their families have an even stronger interest in not being separated from their primary caregiver.

Reno v. Flores, 507 U.S. 292 (1993), is not to the contrary. *Flores* addressed only "the alleged right of a child who *has no available parent, close relative, or legal guardian*, and for whom the government is responsible," to be released from government custody to a private individual. *Id.* at 302 (emphasis added); *see also id.* (referencing situations "where the custody of the parent or legal guardian fails"). The

Court emphasized that the challenged regulation already provided for release to "parents, whom our society and this Court's jurisprudence have always presumed to be the preferred and primary custodians of their minor children" and "to other close blood relatives, whose protective relationship with children our society has also traditionally respected." *Id.* at 310 (citing *Parham v. J.R.*, 442 U.S. 584, 602-03 (1979) and *Moore*, 431 U.S. 494). Here, Plaintiffs were living with available family members and ORR made no showing that the custody of their parents or other custodians has failed.

2. Plaintiffs Have a Liberty Interest in Continued Freedom from Government Custody and Placement in the Least Restrictive Setting under the TVPRA

Plaintiffs and putative class members also have a cognizable interest in avoiding arbitrary revocation of their approved sponsorship under the TVPRA. As the district court recognized, "'[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty' the Due Process Clause protects." Mem. Op. at 8, J.A. 19 (quoting *Zadvydas*, 533 U.S. at 690); *see also Hurd v. D.C.*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("The freedom of a

person to conduct his life physically unconfined by the government is among the most fundamental of constitutional liberty interests.").

The TVPRA provides that "an unaccompanied alien child in the custody of the Secretary of Health and Human Services *shall* be promptly placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A) (emphasis added). Here, "[f]or each member of the plaintiff class, ORR has already determined that the 'least restrictive setting that is in the best interest of the child' is placement with a sponsor." *Saravia*, 905 F.3d at 1143.

Plaintiffs thus have a "legitimate claim of entitlement" in their continued placement with a sponsor sufficient to warrant due process protections. *Goss v. Lopez*, 419 U.S. 565, 573 (1975). Just as state-created property interests are protected by the Due Process Clause, "a person's liberty is equally protected, even when the liberty itself is a statutory creation of the State." *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974).

To show a "legitimate claim of entitlement," Plaintiffs need not establish an absolute right to continued release or that their sponsor approval decision can never be revoked. *Goss*, 419 U.S. at 573. Rather, a "legitimate claim of entitlement" means something "more than an

abstract need or desire" or "a unilateral expectation[.]" *N.B. ex rel. Peacock v. D.C.*, 794 F.3d 31, 41 (D.C. Cir. 2015) (quoting *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972)).

Plaintiffs have much more than an "abstract need or desire for" continuing to live with their previously approved sponsor or "a unilateral expectation of it." *N.B.*, 794 F.3d at 41. They were told release was approved and relied on that approval to move in with their sponsors, strengthen family ties, enroll in school, and begin to build their lives in the community. *See, e.g., Hurd*, 864 F.3d at 683 ("reasonableness of [plaintiff's] expectation" of continued release "strengthens his liberty interest"). Plaintiffs unquestionably suffered "a grievous loss" when they were ripped from their communities and returned to ORR custody. *Santosky*, 455 U.S. at 758; *Saravia*, 280 F. Supp. 3d at 1196; *Olmstead v. L.C.,* 527 U.S. 581, 601 (1999) ("[C]onfinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.").

Plaintiffs' expectation of continued sponsor approval, absent material changed circumstances, is supported by federal law. Congress

exercised its "broad power over naturalization and immigration," *Flores*, 507 U.S. at 305-06, to create a distinct system for unaccompanied children that explicitly favors release over detention. *See, e.g., J.D. v. Azar*, 925 F.3d 1291, 1334 (D.C. Cir. 2019) ("the imperative to find a suitable sponsor exists for *all* unaccompanied minors from the moment they enter ORR custody until a sponsor is found because release to a sponsor is desirable in all instances").

The TVPRA uses mandatory language to require prompt release once ORR has determined that release is the placement in the child's best interests. *See* 8 U.S.C. § 1232(c)(2)(A); *see also N.B.*, 794 F.3d at 41 ("A 'legitimate claim of entitlement' means that a person would be entitled to receive the government benefit *assuming* she satisfied the preconditions to obtaining it."). "[I]f DHS could, the day after a minor was released to a parent or other sponsor, arrest the minor . . . and restart the process, the TVPRA's instruction to place the minor in the least restrictive appropriate setting would mean little." *Saravia*, 905 F.3d at 1143 (quoting *Saravia*, 280 F. Supp. 3d at 1196). ORR's regulations and policies further strengthen Plaintiffs' legitimate claim of entitlement. When ORR releases children from its custody, ORR does not reserve the

right to cancel sponsorship at will. To the contrary, ORR has disclaimed continued custodial authority after release. *See* 89 Fed. Reg. at 34452.

The district court's reliance on *Reno v. Flores* to conclude that Plaintiffs' interests are limited by their status as noncitizen children, Mem. Op. at 8-9, J.A. 19-20, is misplaced. In *Flores*, the Supreme Court noted an absence of legal authority for requiring placement determinations in "[t]he best interests of the child" and found it significant that "Congress eliminated any presumption of release pending deportation[.]" *Id.* at 303-06. Since the *Flores* decision, however, Congress made clear that unaccompanied children *do* enjoy a presumption of release and must be "promptly placed in the least restrictive setting that is in the best interest of the child[.]" 8 U.S.C. § 1232(c)(2)(A); *see also* 6 U.S.C. § 279(b)(1)(B) (requiring ORR to consider "the interests of the child").

Similarly, that children "are always in some form of custody," Mem. Op. at 9 (quoting *Flores*, 507 U.S. at 302), does not negate their legitimate entitlement to continued freedom from confinement and placement in the least restrictive setting under the TVPRA. For example, while the State has "very broad" authority to set standards of conduct for children at

school, the Due Process Clause nonetheless "forbids arbitrary deprivations of liberty." *Goss*, 419 U.S. at 574-75; *see also Application of Gault*, 387 U.S. 1, 17-19 (1967) (although "the highest motives and most enlightened impulses led to a peculiar system for juveniles," "[d]epartures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness").

Parolees, for instance, are subject to significant liberty restrictions but nonetheless retain a protected interest in continuing to live in the community. *See Goss*, 419 U.S. at 573 (noting the Supreme Court "applied the limitations of the Due Process Clause to governmental decisions to revoke parole, although a parolee has no constitutional right to that status") (citing *Morrissey v. Brewer*, 408 U.S. 471 (1972)); *see also Young v. Harper*, 520 U.S. 143, 148-50 (1997); *Hurd*, 864 F.3d at 683-84.

Except for the court below, every court to consider the issue of ORR's revocation of previously approved release has concluded that children have significant liberty interests at stake and the Due Process Clause likely forbids re-detention in ORR custody without notice or an opportunity to be heard. *See Saravia*, 905 F.3d at 1144-45; *E.F.E.L.*, 2026 WL 1045550, at *3-4; *A.N.P.S.*, 2025 WL 3707333, at *4-5; *Saravia*, 280

F. Supp. 3d at 1195-96. Having vetted and approved Plaintiffs' sponsors pursuant to the TVPRA, ORR cannot revoke approval without minimum procedural protections.

B. Plaintiffs Are at High Risk of Erroneous Deprivation Because They Must, in All Cases, Remain Detained While their Sponsor Repeats the Application Process.

The district court erroneously concluded that the lengthy sponsor reapplication process—during which children remain in detention and separated from their families—supplies adequate due process protections. This conclusion disregards the process Plaintiffs seek—notice and an opportunity to be heard *before* they must remain in detention for months on end while their sponsor repeats the application process.

The risk of erroneous deprivation absent procedural protections is particularly high in this case because children face *certain* deprivation—lengthy separation from their primary caregivers, significant interruption of their educations, and institutional confinement—while Defendants refuse to even consider a child's individual circumstances before requiring a new application. That children *might* have another chance at release after their sponsor repeats the lengthy application

process, Mem. Op., at 11-12, J.A. 22-23, fails to reduce this risk and denies children "the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews*, 424 U.S. at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

Moreover, absent evidence of material changed circumstances, there is a high probability that release to their previously vetted and approved sponsor remains the "least restrictive setting that is in the best interest of the child," 8 U.S.C. § 1232(c)(2)(A), and that automatically revoking a child's sponsorship approval will lead to unnecessary detention. *See E.F.E.L.*, 2026 WL 1045550, at *3-4; *A.N.P.S.*, 2025 WL 3707333, at *5; *Saravia*, 280 F. Supp. 3d at 1198-99.

Even assuming that a significant percentage of previously approved sponsors are no longer suitable—a proposition for which Defendants offered no evidence—this would still be insufficient to justify denying children basic procedural protections related to their re-detention. *See Stanley*, 405 U.S. at 654-55, 657-58 (even if "most unmarried fathers are unsuitable and neglectful parents," "some are wholly suited to have custody of their children" and mere administrative convenience "is

insufficient to justify refusing a father a hearing when the issue at stake is the dismemberment of his family").

The district court noted that an updated application may be needed because "a significant amount of time has elapsed between a sponsor's initial approval and an unaccompanied child's re-arrest." Mem. Op. at 10, J.A. 21. But absent evidence of unfitness, the passage of time does not by itself create a presumption of unsuitability. *See Parham*, 442 U.S. at 603 ("The statist notion that governmental power should supersede parental authority in *all* cases because *some* parents abuse and neglect children is repugnant to American tradition.").

To the contrary, where a child is still living with their previously approved sponsor, the passage of time only strengthens the child's interest in "being raised by a loving, responsive, reliable adult" and in continuing to live freely in the community. *Franz*, 707 F.2d at 599; *see also Morrissey v. Brewer,* 408 U.S. 471, 482 (1972) (parolee "may have been on parole for a number of years and may be living a relatively normal life at the time he is faced with revocation" and "has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions").

Although the district court concluded ORR was "providing process of a kind" through the new sponsorship application, Mem. Op. at 11, this does not reduce the serious risk of erroneous deprivation.

First, as described above, even when a previously approved sponsor can meet all ORR's new requirements, this process nonetheless can take many months. *See, e.g.,* Diego Decl. ¶¶ 7-10, J.A.40-41; March Biswas Decl. ¶ 45, J.A.114-115; C.A.C.C. Decl. ¶¶ 2, 6, 10, J.A.86-87; J.M.P.V. Decl. ¶¶ 2, 4, 6-7, J.A.92-93.

Second, treating previously approved sponsors as if they are new sponsors places the burden on the sponsor to once again prove their suitability rather than on ORR to show changed circumstances, making it significantly more difficult for children to return home. *See Stanley,* 405 U.S. at 647-48 (explaining that petitioner lacked "the means at hand promptly to erase the adverse consequences of" his children's removal through adoption because he would have burden to establish his fitness and may not be able to meet that burden given his finances and unmarried status); *see also Troxel*, 530 U.S. at 68-69 ("[S]o long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm

of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children."). This would be analogous to holding that a prisoner could only challenge their parole revocation by applying for parole again. That is plainly inconsistent with due process. *See, e.g., Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) ("hold[ing] that a probationer, like a parolee, is entitled to a preliminary and a final revocation hearing, under the conditions specified in *Morrissey v. Brewer*").

Third, many previously approved sponsors, such as Mario's mother and Benito's aunt, are unable to complete ORR's new application process not because of concerns about their suitability but because they lack specific types of documentation. Mario Decl. ¶ 14, J.A.61-62; Benito Decl. ¶ 10, J.A.69; *see also E.F.E.L.*, 2026 WL 1045550, at *4-5 (finding procedural due process violation where previously approved sponsor established his identity and relationship with child during prior application process but lacked U.S.-issued identification required for new application); *Angelica S.*, 786 F. Supp. 3d at 174 (noting plaintiff Leo B. "was released to his sister under the earlier documentation

requirements" but "is now stuck in ORR custody without any potential sponsor because of the retroactive document changes").

Fourth, children who were living in loving homes also face a serious risk of not being able to return to their families because their previously approved sponsors fear that completing the reapplication process could result in their detention by DHS. Renesme Decl. ¶¶ 11-12, J.A.51-52. Contrary to the district court's suggestion, a sponsor's reluctance to re-apply does not necessarily indicate suitability concerns. *Cf.* Mem. Op. at 10 n.5, J.A. 21. There is no evidence in the record, for example, that Renesme's father is not a fit parent or was unwilling to care for his daughter. Nor is there any justification in the record for Renesme's rearrest. When ORR offered her father an expedited reunification process after the filing of this litigation, he readily participated and ORR again approved him as Renesme's sponsor. Mem. Op. at 5 n.2; May Biswas Decl. ¶ 4, Dkt. 45-1. Had ORR considered Renesme's individual circumstances *before* automatically revoking her sponsorship approval, she would not have had to endure four months of unnecessary detention.

Finally, the district court's suggestion that Plaintiffs could "secure an 'opportunity to be heard at a meaningful time and in a meaningful

manner' through habeas petitions" is inconsistent with basic due process principles. Mem. Op. at 12 (quoting *Mathews*, 424 U.S. at 333). *Defendants*, not the federal courts, have a constitutional obligation to provide minimum due process protections to children in their custody, including prompt consideration of the need for continued detention. *See, e.g., Riverside v. McLaughlin*, 500 U.S. 44, 56-57 (1991) (state must generally provide probable cause determination within 48 hours of warrantless arrest).

If a child prevails on a habeas petition in federal court, it is because ORR has *already* violated their rights. Relief would therefore not come "at a meaningful time." *Mathews*, 424 U.S. at 333; *see, e.g., E.F.E.L.*, 2026 WL 1045550, at *5 (granting habeas petition after concluding that a child "was arrested without reason and without being afforded due process, despite ORR's determination, after thorough vetting, that his brother was a suitable sponsor" and he is "needlessly suffering physically and mentally with no legal justification").

Moreover, Plaintiffs and putative class members are undocumented children, with limited financial means, detained in government custody, and lack ready access to habeas counsel. Defendants are not free to

arbitrarily keep children in detention simply because a subset of children may eventually obtain relief *after* suffering irreparable harm.

C. Any Burden on Defendants Cannot Justify Denying Minimum Procedural Protections

The district court did not make any factual findings regarding the burden of additional procedural protections on Defendants. Instead, the district court merely noted that "[e]ven if that relief is less burdensome than the Government contends, it would surely impose some burden on the Government." Mem. Op. at 11, J.A.22. But the existence of *some* administrative burden is inherent in the requirements of due process. "Procedure by presumption is always cheaper and easier than individualized determination" but that cannot justify denying children and their sponsors "a hearing when the issue at stake is the dismemberment of [their] family." *Stanley*, 405 U.S. at 656-68.

Nor are Defendants' asserted interests in child protection and compliance with their statutory obligations in tension with Plaintiffs' requested relief. Mem. Op. at 9-10, J.A.20-21. As the district court itself found, the TVPRA does not require a new sponsorship application every time a child is re-referred to ORR custody. *Id.* at 14, J.A.25. And Plaintiffs are not asking for immediate release. Plaintiffs simply request ORR

consider the child's circumstances before automatically revoking their approved sponsorship and provide them notice and an opportunity to be heard regarding ORR's determination.

A prompt determination regarding the need for a new sponsorship application would allow ORR to consider whether any changed circumstances indicate the sponsor is no longer "capable of providing for the child's physical and mental well-being" or has "engaged in any activity that would indicate a potential risk to the child" while also abiding by its statutory duty to promptly release the child to a suitable sponsor. 8 U.S.C. §§ 1232(c)(2)(A), (3)(A).

Where there is no evidence of sponsor unfitness, ORR "spites its own articulated goals when it needlessly separates [a child] from his family." *Stanley*, 405 U.S at 652-53. The government's interest in caring for children "is de minimis" if their parent or other sponsor is in fact suitable. *Id.* at 657-58; *see also Santosky*, 455 U.S. at 765-66 ("[W]hile there is still reason to believe that positive, nurturing parent-child relationships exist, the [state's] *parens patriae* interest favors preservation, not severance, of natural familial bonds.").

II. Plaintiffs Are Likely to Succeed on their APA Claims

In addition to their procedural due process claims, Plaintiffs seek vacatur of ORR's blanket reapplication policy under the APA. Plaintiffs are likely to succeed on their APA claims because ORR's policy contravenes the TVPRA and the Foundational Rule's requirements for prompt release, and it was adopted without any reasoned justification or consideration of the consequences for children. Moreover, the possibility of a petition for habeas corpus does not provide an adequate alternative remedy for the relief Plaintiffs seek.

A. ORR's Reapplication Policy is Contrary to Law

The TVPRA imposes twin objectives on ORR: to protect children "from traffickers and other persons seeking to victimize" them and to "promptly" place those children "in the least restrictive setting that is in the best interest of the child[.]" 8 U.S.C. §§ 1232(c)(1)-(2). In applying the blanket reapplication policy to all re-referred children, ORR improperly disregards the second statutory command and its regulatory mandate to "release a child from its custody without unnecessary delay[.]" 45 C.F.R. § 410.1201(a).

The district court correctly recognized that the TVPRA does not

require ORR to impose its blanket reapplication policy, Mem. Op. at 14, 19-20, J.A. 25, 30-31, but nonetheless erred in holding the blanket reapplication policy likely does not exceed ORR's statutory and regulatory bounds.

In cases where ORR has already determined that placement with a sponsor is "the least restrictive setting that is in the best interest of the child" and there is no evidence of material changed circumstances affecting that best interest determination, ORR has a statutory duty to promptly return the child to that least restrictive placement. 6 U.S.C. § 279(b)(2)(A)(ii); 8 U.S.C. § 1232(c)(2)(A); 45 C.F.R. § 410.1201(a); *see also Saravia*, 905 F.3d at 1143; *A.N.P.S.*, 2025 WL 3707333, at *6.

Even if the TVPRA could be read to permit ORR to conduct some reassessment of sponsor suitability when a child re-enters its custody, there is no statutory basis to repeat the *entire* sponsor application process. Requiring sponsors to start the process anew in every case without regard to ORR's previous vetting—including reestablishing their previously verified "identity and relationship to the child," 8 U.S.C. § 1232(c)(3)(A)—is inconsistent with ORR's duty of prompt placement, *id.* § 1232(c)(2)(A), and causes "unnecessary delay" in the child's release, 45

C.F.R. § 410.1201(a). Because this is precisely what the reapplication policy does, it is contrary to law and the district court erred in holding otherwise.

B. ORR's Reapplication Policy is Arbitrary and Capricious

The district court recognized that ORR made a policy choice as to what, if any, reassessment of sponsor suitability it should conduct when a child re-enters its custody. Mem. Op. at 19-20, J.A. 30-31. ORR admits it conducted no reasoned analysis justifying this policy, did not consider potential alternatives, and never considered Plaintiffs' reliance interests. Instead, ORR reflexively adopted this policy under the erroneous assumption that it is mandated by the TVPRA. The reapplication policy is plainly neither "reasonable [nor] reasonably explained." *Jackson v. Mabus*, 808 F.3d 933, 936 (D.C. Cir. 2015). The district court's conclusion that the policy was likely not arbitrary and capricious is thus inconsistent with multiple foundational principles of reasoned agency action.

First, ORR has provided no explanation whatsoever for why the entire sponsor vetting process must be repeated every time a previously released child comes back into ORR custody. An "agency must provide at least a brief statement of its reasoning that explains why it chose to do

what it did, so that the court can reasonably discern the agency's path." *Ramirez v. U.S. Immigr. & Customs Enf't*, 471 F. Supp. 3d 88, 98 (D.D.C. 2020) (internal citations omitted); *Mori v. Dep't of the Navy*, 917 F. Supp. 2d 60, 64 (D.D.C. 2013) ("An agency action that lacks explanation is a textbook example of arbitrary and capricious action.").

ORR appears to have adopted its reapplication policy solely based on its assumption that the TVPRA requires reapplication. *See, e.g., A.N.P.S.*, 2025 WL 3707333, at *6. But, as the district court correctly found—and as the Ninth Circuit concluded in 2018—the TVPRA requires no such thing. Mem. Op. at 14, 19-20, J.A. 25, 30-31 (citing *Saravia*, 905 F.3d at 1143). Even as to their assertion that this policy is required by the TVPRA, Defendants have not put forward "any record showing a consideration of relevant law, agency documents, or the impact on UAC." *L.V.M. v. Lloyd*, 318 F. Supp. 3d 601, 609 (S.D.N.Y. 2018). "This is at the zenith of impermissible agency actions." *Id.*

Although Defendants referenced concerns about ORR's prior vetting processes before the district court, they did not show that those concerns formed the basis of ORR's reapplication policy. *See, e.g, DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 22 (2020) (courts do not consider

"impermissible *post hoc* rationalizations"). In any event, ORR is not reevaluating every past sponsorship decision and in fact has disclaimed the authority to do so. 89 Fed. Reg. at 34452; *see also A.N.P.S.*, 2025 WL 3707333, at *6 n.6 ("An application of the Rule that would permit the Government to re-arrest the thousands of UACs placed with a sponsor prior to April 2024, taking them away from their family and community, would be the definition of absurd."). Had Plaintiffs not been re-apprehended by DHS, ORR would never have revisited their sponsor approval.

Even assuming ORR's policy was adopted based on general child welfare concerns—for which Defendants presented no evidence below—there is no rational justification for refusing to make individualized determinations regarding whether each child's particular circumstances demonstrate a need to reconsider sponsorship approval. *See Solondz v. FAA*, 141 F.4th 268, 279 (D.C. Cir. 2025) (holding that FAA decision to categorically disqualify airmen taking a specific medication without case-by-case consideration was arbitrary and capricious because it lacked a reasoned rationale).

Second, ORR entirely failed to acknowledge the serious reliance interests that children and their sponsors have on the initial sponsorship approval decision. *See Regents*, 591 U.S. at 33 (holding it was arbitrary and capricious for DHS to fail to consider reliance interests of DACA recipients even if it concluded DACA was unlawful; "because DHS was 'not writing on a blank slate,' it *was* required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns") (internal citations omitted). Plaintiffs lived with their approved sponsors for years and developed strong reliance interests in remaining rooted to their communities: continuing to attend school, participate in sports and other activities, and reside with their loved ones. *See, e.g.*, Benito Decl. ¶¶ 4-6, J.A.68; Renesme Decl. ¶¶ 4-6, J.A.50-51; Diego Decl. ¶¶ 3-4, J.A.39-40; Mario Decl. ¶¶ 5-6, 21, J.A.60; J.M.P.V. Decl. ¶¶ 3, 9-12, J.A.92-94; *see also Angelica S.*, 786 F. Supp. 3d at 174 (holding that ORR failed to adequately consider reliance interests when it adopted new identification policy, including interests of child previously living with his sponsor).

In each Plaintiff's case, ORR determined the child's sponsor is suitable and that it was appropriate to release the child to that sponsor

consistent with the TVPRA. *Saravia*, 905 F.3d at 1142. ORR then changed its position—revoking the sponsor approval and requiring the sponsor to reapply. In doing so, it failed to provide any explanation for its decision, "display awareness that [it is] changing position" or consider "serious reliance interests" of children. *FDA v. Wages & White Lion Invs., LLC*, 604 U.S. 542, 568 (2025) (internal citations omitted).

Third, despite the serious reliance interests at stake ORR failed to consider any reasonable alternatives—like having sponsors repeat only those portions of the application process directly relevant to identified child welfare concerns—and likewise failed to give any consideration to the harms of prolonged detention. "An agency is required to consider responsible alternatives to its chosen policy and to give a reasoned explanation for its rejection of such alternatives." *Spirit Airlines, Inc. v. U.S. Dep't of Transp.*, 997 F.3d 1247, 1255 (D.C. Cir. 2021) (quoting *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 242 (D.C. Cir. 2008)). ORR never considered whether the benefits of requiring full reapplication in every case outweigh the well-established harm to children's mental health, family integrity, personal liberty, and educational progress that prolonged detention causes. ORR thus failed to

"examine the relevant data" and "entirely failed to consider [these] important aspect[s] of the problem." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Fourth, even if ORR had provided some justification for its blanket reapplication policy, any justification would be impermissibly inconsistent with the purpose of the requirement being implemented. *See Air All. Houston v. Env't Prot. Agency*, 906 F.3d 1049, 1064 (D.C. Cir. 2018) (holding that rule that undermines the objectives of the statute "makes a mockery of the statute"); *Montana Wildlife Fed'n v. Haaland*, 127 F.4th 1, 39 (9th Cir. 2025) (holding that prioritizing administrative efficiency over public participation in its streamlining of oil and gas leasing decisions was contrary to the purposes of the National Environmental Policy Act).

The goal of the TVPRA is to protect children's best interests and place them in the least restrictive setting consistent with those interests. Automatically revoking previous sponsor approval decisions and requiring every sponsor to begin the application process anew results in lengthier detention of children in more restrictive settings, away from their loved ones, without consideration of their best interests. The

reapplication policy is therefore in direct conflict with the purpose of the TVPRA. *Air All. Houston*, 906 F.3d at 1064 (holding that rule delaying effectiveness of Clean Air Act regulation was contrary to the very purposes of the act).

Finally, the reapplication policy leads to absurd and arbitrary results. For example, by requiring all sponsors to repeat every part of the reapplication process, ORR requires sponsors to repeatedly prove an identity that ORR has already verified, including through requirements that block release altogether. Benito Decl. ¶ 10, J.A.69. The reapplication process would require a relative to undergo DNA testing to prove their relationship to the same child over and over again—even though the child and the sponsor's biological relationship does not change over time. *See, e.g., E.F.E.L. v. Noem*, 2026 WL 1045550 at *2-3. This is the height of arbitrariness. *See Food & Water Watch v. FERC*, 104 F.4th 336, 344 (D.C. Cir. 2024) (agency should consider whether reporting demand "would have produced useful information").

C. Plaintiffs' Claims are Reviewable under the APA

The district court further erred in holding that Plaintiffs' APA claims are barred because habeas could provide another adequate

remedy. *See* Mem. Op. at 15-16, J.A. 26-27 (citing 5 U.S.C. § 704 (exempting from judicial review agency action for which there is an "adequate remedy in a court")). The district court's analysis fails to grapple with the strong presumption of judicial review under the APA and misstates the relief requested.

The APA confers a general cause of action upon persons "adversely affected or aggrieved by agency action within the meaning of a relevant statute," 5 U.S.C. § 702, and that general grant of judicial review is withdrawn only in specific circumstances. Congress intended the "adequate remedy" provision in Section 704 of the APA "to avoid duplicating previously established special statutory procedures for review of agency actions." *Darby v. Cisneros*, 509 U.S. 137, 146 (1993). "The exception [in Section 704] that was intended to avoid such duplication should not be construed to defeat the central purpose of providing a broad spectrum of judicial review of agency action." *Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988).

"[T]he 'generous review provisions' of the APA must be given 'a hospitable interpretation' such that 'only upon a showing of clear and convincing evidence of a contrary legislative intent should the courts

restrict access to judicial review.'" *El Rio Santa Cruz Neighborhood Health Ctr., Inc. v. U.S. Dep't of Health & Hum. Servs.*, 396 F.3d 1265, 1270 (D.C. Cir. 2005) (quoting *Abbott Labs v. Gardner*, 387 U.S. 136, 141 (1967)); *see also Bowen v. Mich. Academy of Family Physicians*, 476 U.S. 667, 670 (1986) (noting strong presumption "that Congress intends judicial review of administrative action").

Neither Defendants, nor the district court, identified any duplicative statutory procedures nor any evidence of legislative intent to preclude APA review here, much less clear and convincing evidence of such intent. *El Rio Santa Cruz Neigh. Health Ctr.*, 396 F.3d at 1270.[5] Plaintiffs bring quintessential APA claims challenging an unlawful and arbitrary agency policy that the agency applies generally to re-referred children in its custody. *See, e.g., Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 890 n.2 (1990) (a final agency action "applying some particular

[5] The district court cited Justice Kavanaugh's concurrence in *J.G.G. v. Trump* for the proposition that habeas can be an adequate alternative remedy to an APA claim. Mem. Op. at 15, J.A.26. But the statute at issue in *J.G.G.* "largely precludes judicial review," 604 U.S. at 672 (internal citations omitted), whereas nothing precludes judicial review here. The Court's opinion in *J.G.G.* did not address the adequate alternative remedy provision of 5 U.S.C. § 704 and in no way displaced prior precedent on the narrow applicability of this provision. 604 U.S. 670.

measure across the board to all individual classification terminations and withdrawal revocations . . . can of course be challenged under the APA by a person adversely affected"). Indeed, district courts have regularly permitted similar APA challenges to ORR policies that impact children's opportunities for release. *See, e.g., Angelica S.*, 786 F. Supp. 3d at 172-75; *L.V.M.*, 318 F. Supp. 3d at 612; *J.E.C.M.*, 352 F. Supp. 3d at 582-84.

The district court's approach got the analysis backwards—instead of beginning from the general presumption of APA review and considering whether a specific statutory procedure exists that was intended to usurp the general availability of APA review, the district court assumed that any general remedy could preclude APA review. Even under the district court's framing, however, habeas fails to provide an adequate remedy.

First, habeas does not offer Plaintiffs relief "of the same genre" that they seek here and thus does not bar Plaintiffs' claims under the APA. *El Rio Santa Cruz Neigh. Health Ctr.*, 396 F.3d at 1272 (quoting *Women's Equity Action League v. Cavazos*, 906 F.2d 742, 751 (D.C. Cir. 1990)). Plaintiffs challenge ORR's blanket policy of revoking prior sponsor approval decisions and requiring all previously approved sponsors to

repeat the entire sponsor application process. With respect to their APA claims, they seek an order vacating this policy. Vacatur of the reapplication policy is not available through an individual action for habeas corpus, and it is valuable to Plaintiffs because it would impact not only their current sponsor application processes but also prevent them from becoming subject to the same policy in the future. *See, e.g.,* Diego Decl. ¶ 17, J.A.42 ("I live near the border and I also want to make sure that if I encounter immigration in the future, I don't have to repeat this experience.").

With that relief in mind, habeas is plainly not an adequate alternative remedy within the meaning of 5 U.S.C. § 704. An individual action for habeas corpus is necessarily focused on that child's circumstances rather than ORR's generally applicable policy. The district court concluded that Plaintiffs "seek a process by which an independent arbiter can determine whether their detention is valid, and habeas provides that process." Mem. Op. at 17, J.A. 28.[6] Not so. Plaintiffs do not

[6] The district court also mistakenly characterized Plaintiffs' requested relief as an improper "'hurry up plus' order that would require ORR not only to process their release to sponsors more rapidly but also to establish new hearing procedures for doing so." Mem. Op. at 18 n.8, J.A. 29 (citing *L.V.M.*, 318 F. Supp. 3d at 621). But Plaintiffs request a prompt hearing

request a determination as to the validity of their detention through this action. They instead request that ORR's blanket reapplication policy be enjoined and that *ORR* make a determination at the *beginning* of a child's detention—before a child spends months in detention—whether material changed circumstances justify revocation of their previously approved sponsor application and a need for additional sponsor vetting.

Plaintiffs do not challenge the lawfulness of their arrests through this action or seek an order of release. *See* Compl. Prayer for Relief, Dkt. 1. Indeed, Plaintiffs have acknowledged that the relief they request, an individualized assessment of the circumstances of their re-referral, may result in a determination that additional sponsor vetting is required if there are well-founded concerns about a previously approved sponsor's suitability. *See, e.g.,* PI Hearing Transcript, at 28:14-17, J.A. 233.

"Claims that 'will not *necessarily* imply the invalidity of confinement or shorten its duration" are not at the 'core' of habeas and

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on the revocation of their release as part of their Due Process claim, not their APA claim. Plaintiffs seek the same relief on their APA claim that the district court awarded in *L.V.M.* —a preliminary injunction against ORR's unlawful policy. 318 F. Supp. 3d at 620-21. In any event, Plaintiffs' requested relief is not an improper "hurry up" injunction because it is "narrowly tailored to fit specific legal violations." *Id.* at 621 (quoting *Patsky's Ital. Res., Inc. v. Banas*, 658 F.3d 254, 272 (2d Cir. 2011).

therefore may be pursued through other causes of action." *Davis v. U.S. Sent'g Comm'n*, 716 F.3d 660, 665-66 (D.C. Cir. 2013) (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005)). Although the district court noted that courts may "fashion appropriate relief other than immediate release" in response to a habeas claim, the case cited refers to analogous remedies such as relief from parole conditions, not vacatur of an agency policy. *See* Mem. Op. at 16, J.A. 27; *Peyton v. Rowe*, 391 U.S. 54, 66-67 (1968).

Second, even if habeas provided a "special statutory procedure[] for review of" Plaintiffs' claims—which it does not—it would not constitute an "adequate remedy" because habeas cannot provide the prompt and certain review that Plaintiffs' claims require. *Darby*, 509 U.S. at 146. As discussed above, habeas provides a remedy only *after* a child's rights have been violated. *See Ramirez v. U.S. Immigr. & Customs Enf't*, 310 F. Supp. 3d 7, 24 (D.D.C. 2018) (holding bond hearing is not an adequate alternative remedy to challenge ongoing detention of former unaccompanied children who have aged out because "prompt action is not necessarily guaranteed"); *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 185 (D.D.C. 2015) (review by immigration judge inadequate because "it occurs weeks or months after ICE's initial denial of relief" and further

noting "APA and habeas review may coexist.").

Importantly, when similarly situated children have brought petitions for habeas corpus challenging their re-detention in ORR custody, Defendants have consistently argued that these children must first exhaust administrative remedies through a new sponsorship application. *See E.F.E.L.*, 2026 WL 1045550, at *5; *A.N.P.S.*, 2025 WL 3707333, at *5-6. Although the district courts in those cases declined to require prudential exhaustion, they did so as a matter of discretion. *E.F.E.L.*, 2026 WL 1045550, at *5; *A.N.P.S.*, 2025 WL 3707333, at *5-6.

There is thus no guarantee of meaningful *de novo* review in habeas and the possibility of such review "is too doubtful to constitute an adequate remedy precluding APA review." *El Rio Santa Cruz Neigh. Health Ctr.*, 396 F.3d at 1270; *see also U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590, 601 (2016) (applying for a permit and then seeking judicial review was not "an adequate alternative to APA review" where "the permitting process can be arduous, expensive, and long").

The district court placed too much significance on Plaintiffs' citations to cases originally brought in habeas. Mem. Op. at 17, J.A. 28. That some children have obtained *delayed* relief through habeas does not

make it an adequate alternative remedy for all children. And, as the district court acknowledged, the court in *Saravia* granted relief on non-habeas grounds. *Id.* In *Saravia*, the lead plaintiff brought both an individual habeas claim and class-wide procedural due process and APA claims. 280 F. Supp. 3d at 1181-82. The court ultimately granted a preliminary injunction on class-wide procedural due process claims, not on habeas grounds. *Id.* at 1194. As with the class-wide claims in *Saravia*, Plaintiffs here seek relief unavailable in habeas.

Nor did the *Saravia* court grant "wider relief than necessary," as the district court suggested. Mem. Op. at 17, J.A.28. The court in *Saravia*, like the district court here, was ruling on a motion for a class-wide preliminary injunction and determined class-wide relief was necessary to address policies generally applicable to the class. 280 F. Supp. 3d at 1205-06. It notably declined to grant any habeas relief at the preliminary injunction stage. *Id.* at 1206. Requiring procedural protections was not a broader form of relief than granting a habeas petition for immediate release; it was simply a different form of relief.

III. Plaintiffs Satisfy the Remaining Preliminary Injunction Factors

As the district court acknowledged, Plaintiffs are suffering

irreparable harm because "[f]amily separation and prolonged detention certainly qualify as irreparable injuries." Mem. Op. at 24, J.A.35. The district court denied relief largely based on its assessment of Plaintiffs' likelihood of success on the merits. *Id.* at 24-25. But as Plaintiffs have shown, they have a likelihood of success on each of their claims. "[T]he Plaintiffs' likelihood of success on the merits lightens the Executive's stated interests." *Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 734 (D.C. Cir. 2022). In any event, a preliminary injunction would further rather than undermine Defendants' asserted interest in protecting children's best interests.

Plaintiffs' requested relief is not unnecessarily intrusive. The district court's suggestion that "[t]he scope of Plaintiffs' requested relief also augurs against an injunction" because "ORR 'does not have access to' detached decisionmakers" and requiring a hearing would "contravene the 'judicial deference to the Executive Branch [that] is especially appropriate in the immigration context," is not supported by the record. Mem. Op. at 25, J.A. 36 (quoting Defendants' Opposition at 27 and *INS v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999)).

As an initial matter, the district court provided no explanation of

its conclusion that ORR lacks access to detached decisionmakers. *See, e.g., Lyles v. United States*, 759 F.2d 941, 944 (D.C.Cir.1985) ("Where the trial court provides only conclusory findings, unsupported by subsidiary findings or by an explication of the court's reasoning with respect to the relevant facts, a reviewing court simply is unable to determine whether or not those findings are clearly erroneous."). The district court may have relied on a statement in Toby Biswas' declaration that "ORR would need to enter into Inter Agency Agreements ("IAAS") to work with the Department[al] Appeals Board ("DAB") to set up these hearings." March Biswas Decl. ¶ 40, J.A. 113. But Mr. Biswas acknowledged that "ORR has previously entered into IAAs with the DAB to provide regulatorily required hearings for ORR matters[.]" *Id.*; *see also* 45 C.F.R. §§ 410.1206 (appeals of sponsor denials); 410.1903 (risk determination hearings in cases where ORR alleges a child is a danger to self or the community).

Given that ORR already provides administrative hearings for other matters through an agreement with DAB, this presents at most a logistical and timing concern, not an insurmountable hurdle to providing constitutionally required due process. Moreover, as Plaintiffs noted in their reply in support of a preliminary injunction, ORR currently

provides children placed in restrictive settings with Placement Review Panel hearings before a panel of ORR employees, which does not require a contract outside ORR. *See* 45 C.F.R. §§ 410.1001, 410.1902. The district court itself recognized that the relief requested may be "less burdensome than the Government contends[.]" Mem. Op. at 11, J.A. 22.

Nor does the executive branch's authority over immigration matters justify denying children due process related to sponsor suitability. Congress intentionally transferred authority over unaccompanied children from the immigration enforcement system to an agency with a child welfare mission. The district court's citation to *INS v. Aguirre-Aguirre*, 526 U.S. 415, is misplaced. Mem. Op. at 25, J.A. 36. That case involved *Chevron* deference to a Board of Immigration Appeals determination related to withholding of removal. *Aguirre-Aguirre*, 526 U.S. at 424. But even when *Chevron* was good law, courts deferred only to an agency's interpretation of an ambiguous statute, not constitutional requirements. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 410-12 (2024). Moreover, sponsor suitability is a child welfare issue separate from any determination of immigration relief and does not implicate "especially sensitive political functions that implicate questions

of foreign relations." Mem Op. at 25, J.A. 36 (quoting *Aguirre-Aguirre*, 526 U.S. at 425).

Plaintiffs' proposed relief in no way interferes with ORR's statutory obligations. Plaintiffs request only that ORR make an individualized determination as to whether a new sponsorship application is required and provide basic procedural protections related to that determination, in support of the parties' shared goal of protecting children's best interests.

Although a preliminary injunction "necessarily include[s] the risk that the relief requested will cause unusual disruption if granted in error," there is no heightened standard in this Circuit for "injunctions that alter the status quo or grant irreversible relief" and "the established test for preliminary relief is sufficiently flexible to take account of all the concerns implicated by the nature of the relief sought here." *Singh v. Berger*, 56 F.4th 88, 96-97 (D.C. Cir. 2022); *see also id.* at 110 (remanding "for the prompt entry of a preliminary injunction requiring the Marine Corps" to take certain actions to accommodate the plaintiffs' faith). Here, Plaintiffs have shown serious irreparable injury and a strong likelihood of success on the merits, whereas Defendants identified only minor

administrative inconvenience and the speculative possibility that some previously approved sponsors might later become unsuitable and somehow still manage to prevail at an administrative hearing.

CONCLUSION

For the foregoing reasons, the district court's opinion and order should be reversed and remanded for prompt issuance of a preliminary injunction consistent with the Court's opinion.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface and type-volume limitations in Federal Rule of Appellate Procedure 32(a)(7) because it contains 12,993 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and D.C. Cir. Rule 32(e)(1). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century font.

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