TODD BLANCHE
Deputy Attorney General
BILAL A. ESSAYLI
First Assistant United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
DANIEL A. BECK (Cal. Bar No. 204496)
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-2574
E-mail: Daniel.Beck@usdoj.gov

Attorneys for Federal Respondents

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

O.J.R.A., S.A.R., and J.A.R., Minors, by and through Erica Santamaria, as Next Friend of Minors,

Petitioners,

v.

RUBY HERNANDEZ, Federal Field Specialist, Office of Refugee Resettlement, et al.,

Respondents.

No. 2:26-cv-00482-AB-PD

RESPONDENTS' OPPOSITION TO PETITIONERS' *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER

[Declaration of Toby Biswas]

TABLE OF CONTENTS

		PAGE
I.	INTRODUCTION	1
II.	LEGAL STANDARD FOR *EX PARTE* TRO APPLICATION	3
III.	LEGAL FRAMEWORK	4
	A. The Homeland Security Act of 2002	4
	B. The Trafficking Victims Protection Reauthorization Act of 2008	5
	C. The Foundational Rule (2024)	5
	D. ORR Release Policies and Practice	7
IV.	FACTUAL AND PROCEDURAL BACKGROUND	9
V.	ARGUMENT	11
	A. The TRO Application is Procedurally and Substantively Defective	11
	B. The Balance of Equities and Public Interest Supports Denial of a TRO	13
VI.	CONCLUSION	15

TABLE OF AUTHORITIES

Federal Cases

Anderson v. United States,
612 F.2d 1112 (9th Cir. 1980) 3, 4

Chalk v. U.S. Dist. Court,
840 F.2d 701 (9th Cir. 1988) 3

Comm. of Cent. Am. Refugees v. Immigr. & Naturalization Serv.,
795 F.2d 1434 (9th Cir. 1986) 4

Garcia v. Google, Inc.,
786 F.3d 733 (9th Cir. 2015) (en banc) 4

Marlyn Nutraceuticals v. Mucos Pharma GmbH & Co.,
571 F.3d 873 (9th Cir. 2009) 3, 4

Martin v. Int'l Olympic Comm.,
740 F.2d 670 (9th Cir. 1984) 3-4

Mazurek v. Armstrong,
520 U.S. 968 (1997) 3

Meghrig v. KFC W., Inc.,
516 U.S. 479 (1996) 3

New Motor Vehicle Bd. v. Orrin W. Fox Co.,
434 U.S. 1345 (1977) 14

Nken v. Holder,
556 U.S. 418 (2009) 3, 13

Senate of California v. Mosbacher,
968 F.2d 974 (9th Cir. 1992) 4

Stanley v. Univ. of S. Cal.,
13 F.3d 1313 (9th Cir. 1994) 3

Weinberger v Romero-Barcelo,
456 U.S. 305 (1982) 14

Winter v. Nat. Res. Def. Council, Inc.,
555 U.S. 7 (2008) 3

Federal Statutes

6 U.S.C. § 542 5
6 U.S.C. §§ 279(a) 5
8 U.S.C. § 1232(b)(1) 5
8 U.S.C. § 1232(b)(3) 5, 6
8 U.S.C. § 1232(c) 5
8 U.S.C. § 1232(c)(2) 5

I. INTRODUCTION

The minor Petitioners identified in the caption are three unaccompanied alien children (UAC) who entered the United States on April 30, 2025, and were referred into the care and custody of the Office of Refugee Resettlement (ORR), which placed them into Hanna's House Children's Homes. That is the status quo.

This habeas action is brought by a putative 'next friend,' Erica Santamaria—who appears unrelated to the Petitioners. The asserted 'next friend' complains of delays in an sponsorship application that was filed five months ago (i.e. four months after the Petitioners had entered the United States and been taken into ORR's custody and care) by the Petitioners' biological mother, M.R.A.

The Court rightly ordered the 'next friend' to file for guardian ad litem status in order to proceed with the litigation [Dkt. no. 5]; the 'next friend' should have done that at the outset, however. Magistrate Judge Donahue also issued an order requiring an answer or motion to dismiss to be filed by the Respondents by February 3, 2026 [Dkt. no. 14]. The Court has thus already ordered an expedited resolution of this matter.

Inexplicably, however, the next friend then filed an *ex parte* TRO Application [Dkt. no. 11] seeking a TRO that would (1) alter the status quo; (2) via a mandatory preliminary injunction/TRO; that (3) grants the ultimate relief sought by the Petition, i.e. immediately releasing the three Petitioners into the custody of M.R.A. The next friend thus seeks the most extreme TRO relief possible, a type that is almost always improper, particularly against an unresolved conflict of interest. The Court has not even granted the applications authorizing them to represent the minor Petitioners, which were instead filed at the same time [Dkt. nos. 8, 9, 10, 11].[1]

[1] To be clear, Ms. Santamaria might be appointed guardian ad litem for these Petitioners (Respondents take no position at this juncture). To *presume* at the outset, however, that she adequately represents the interests of the minor petitioners, and not those of the sponsor applicant, and not those of the public interest organization she

(footnote cont'd on next page)

Again, the three minors were unaccompanied children who were referred over to ORR for their care and custody. As explained below, ORR then promptly identified M.R.A. as a potential sponsor and worked to try to arrange for a potential reunification, including providing the application materials. Several months later, M.R.A. filed an application for their custody, as a sponsor applicant. But she complains (via the next friend) that this application has not been decided quickly enough. That complaint of delay is not a valid basis for a TRO Application seeking mandatory relief that disrupts the existing status quo by granting the ultimate relief requested. And as discussed below, there have been significant problems with M.R.A.'s application.

That is not to say that M.R.A. is not an appropriate sponsor, and that her FRA will not be granted—it is that the process must be followed. ORR has important statutory and procedural requirements that it must follow before releasing the children within its care and custody to applying sponsors. For example, the recent home study conducted for M.R.A. resulted in a negative recommendation due to its proximity to a registered sex offender. *See* Declaration of Emily Gerber Sugarman, ¶ 10 [Dkt. 11-2]. Petitioner's counsel disagrees with that concern, and believes this issue was not a significant problem. *Id.* Such disagreements are not a basis for a mandatory TRO altering the current status quo, however.

For unaccompanied minors, ORR cannot presume that a subsequent sponsor applicant, even when closely related (as with a biological mother), is able to adequately and properly take care of their needs. ORR must follow the proper processes and investigation. And while Ms. Santamaria insists that these minors must now be released to M.R.A. *immediately*, by a TRO, these children were already separated from M.R.A. long before she applied as a sponsor to take them back into her custody.

---

works for, is inconsistent with civil procedure. Process is important, because it helps ensure that adults purporting to bring and litigate claims on behalf of the minors are not inadvertently advancing other potentially conflicting agendas.

The process needs to be followed and brought to a timely conclusion that will advantage the minor Petitioners at issue, ensuring their proper care and custody. By contrast, the *ex parte* TRO Application is pervaded by numerous severe fundamental procedural and substantive defects, and it should be denied accordingly.

II. LEGAL STANDARD FOR *EX PARTE* TRO APPLICATION

"[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (internal citation omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 21–22 (2008). To meet that showing, the moving party must make "a clear showing" 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*, 555 U.S. at 21–22. Where the government is a party, the balance of equities and the public interest factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

"A preliminary injunction can take two forms." *Marlyn Nutraceuticals v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). "A prohibitory injunction prohibits a party from taking action and 'preserve[s] the status quo pending a determination of the action on the merits.'" *Id.* (quoting *Chalk v. U.S. Dist. Court*, 840 F.2d 701, 704 (9th Cir. 1988)). In contrast, a "mandatory injunction 'orders a responsible party to take action.'" *Id.* at 879 (quoting *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 484 (1996)). "A mandatory injunction 'goes well beyond simply maintaining the status quo *pendente lite* [and] is particularly disfavored.'" *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994) (quoting *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1980)). To this end, where "a party seeks mandatory preliminary relief that goes well beyond maintaining the status quo *pendente lite*, courts should be extremely cautious about issuing a preliminary injunction." *Martin v. Int'l Olympic Comm.*, 740 F.2d 670,

675 (9th Cir. 1984); *Comm. of Cent. Am. Refugees v. Immigr. & Naturalization Serv.*, 795 F.2d 1434, 1441 (9th Cir. 1986) (same). For mandatory preliminary relief to be granted, Plaintiffs "must establish that the law and facts *clearly favor* [thei]r position …." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (*en banc*) (emphasis in original); *see also Marlyn Nutraceuticals*, 571 F.3d at 879 ("In general, mandatory injunctions 'are not granted unless extreme or very serious damage will result and are not issued in doubtful cases …."") (quoting *Anderson*, 612 F.2d at 1115).

Here, the status quo is that the minor Petitioners have been within the custody of ORR for about nine months. The Petition does not claim that they were unlawfully referred into that custody, nor were they; they came as unaccompanied children. Instead, M.R.A. *subsequently* filed an application to assume custody as their sponsor, several months later. The dispute raised by the Petition is over that application to *change* the custody status quo. A TRO is not the proper procedural mechanism for that.

Finally, it is improper to seek the ultimate relief for a lawsuit in the form of a mandatory preliminary injunction. A TRO or PI is intended to preserve the status quo until the case can be judged on the merits. Thus "judgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of California v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992). Yet that highly inappropriate result is exactly what the next friend seeks via the TRO Application filed here. Contrast, conversely, the expedited schedule that the Court ordered for a substantive resolution of the Petition.

III. LEGAL FRAMEWORK

A. The Homeland Security Act of 2002

With the enactment of the HSA, Congress created DHS and transferred most immigration functions formerly performed by INS to DHS and its components, including U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement ("ICE"). See HSA; Department of Homeland Security Reorganization Plan Modification of January 30, 2003, H.R. Doc.

No. 108-32 (2003) (also set forth as a note to 6 U.S.C. § 542). Notably, Congress transferred to [ORR] the responsibility for the care of any UAC "who [is] in Federal custody by reason of [his or her] immigration status." 6 U.S.C. §§ 279(a), (b)(1)(A). The HSA also transferred to ORR the responsibility for making all placement decisions for UACs, required ORR to coordinate these placement decisions with DHS, and required ORR to ensure that UACs are not released upon their own recognizance. See 6 U.S.C. §§ 279(b)(1)(C), (D), (b)(2).

B. The Trafficking Victims Protection Reauthorization Act of 2008

he TVPRA, which was signed into law on December 23, 2008, contains statutory protections relating to unaccompanied alien children (UACs) and codified protections related to the processing and detention of UACs. The TVPRA built on the split of duties in the HSA and further requires that "the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services." 8 U.S.C. § 1232(b)(1). It also provides that in most instances, "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).

The TVPRA makes clear that HHS is responsible for all placement decisions for UACs in its custody, and for conducting suitability assessments for those placements. 8 U.S.C. § 1232(c). It requires that UACs in HHS custody be "promptly placed in the least restrictive setting that is in the best interest of the child," and it provides guidelines for the reunification of UACs with their families by HHS. 8 U.S.C. § 1232(c)(2), (3).

C. The 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. 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. Effective July 1, 2024, the Foundational Rule formalized previously informal procedures, including those related to ORR's release policies and practices.

The Foundational Rule provides that ORR identifies a standard program placement for the UAC upon notification from any federal department or agency that a child in its custody is an UAC and therefore must be transferred to ORR custody. 45 C.F.R. § 410.1101(b). ORR works with the referring federal government department or agency to accept transfer of custody of the UAC, consistent with the statutory requirements at 8 U.S.C. § 1232(b)(3) and 45 C.F.R. § 410.1101(c). ORR places each UAC in the least restrictive setting that is in the best interest of the child and appropriate to the unaccompanied child's age and individualized needs. 45 C.F.R. § 410.1103(a). ORR may place a child in a shelter facility, foster home or group home (which may be therapeutic), heightened supervision facility or secure facility (including residential treatment centers), or other care facility that can provide for their specific individualized needs, including an out-of-network ("OON") placement (which may be restrictive or non-restrictive). 45 C.F.R. § 410.1102; UAC Policy Guide § 1.2. ORR also considers several factors that are relevant to the UAC's placement, including but not limited to: danger to self; danger to the community/others; runaway risk; trafficking in person or other safety concerns; age; and gender. 45 C.F.R. § 410.1103(b).

While the UAC remains in ORR custody, ORR seeks to release the UAC from its custody "[s]ubject to an assessment of sponsor suitability," 45 C.F.R. § 410.1201, which includes "verification of the potential sponsor's identity," 45 C.F.R. § 410.1202(b), "verification of the employment, income, or other information provided by the potential sponsor as evidence of the ability to support the child," 45 C.F.R. § 410.1202(c), and "[i]n all cases, ORR shall require background and criminal records checks," *id.*, which may include a criminal history check based on fingerprints. The

Foundational Rule 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.

D. ORR Release Policies and Practice

To carry out its statutory mandate under the HSA and TVPRA, ORR has developed policies and procedures for identifying, and conducting suitability assessments of, potential sponsors. These procedures are generally set out in the ORR's publicly available UAC Bureau Policy Guide (UAC Policy Guide). *See* ORR Unaccompanied Alien Children Bureau Policy Guide, *available at* https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide. 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. Rather, ORR only takes children into its custody upon referral by another federal agency, as described in statute. In this regard, ORR is also very different from state child welfare agencies, which typically retain such authority post-placement. Accordingly, ORR must front-load child safety considerations in its identity verification and sponsor-vetting policies.

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." UAC Policy Guide § 2.1. There are four categories of potential sponsors: (1) Category 1, consisting of parents or legal guardians; (2) Category 2A, consisting of siblings, half-siblings, grandparents, immediate relatives (such as aunts, uncles, and cousins) who previously served as a

primary caregiver, and other biological relatives and relatives through marriage; (3) Category 2B, consisting of immediate relatives (including biological relatives and relatives through marriage) who did not previously serve as a primary caregiver; (4) Category 3, consisting of other sponsors, such as distant relatives and unrelated adult individuals. UAC Policy Guide § 2.2.1. ORR (through its care providers) conducts a suitability assessment of the potential sponsor, including a review of the sponsor's strengths, resources, risk factors, and special concerns within the context of each child's needs, strengths, resources, risk factors, and relationship to the sponsor. UAC Policy Guide §§ 2.2.2, 2.4.

A potential sponsor must complete a Family Reunification Application ("FRA"), 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. UAC 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). UAC Policy Guide § 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. UAC Policy Guide § 2.4.2.

Once the assessment of the potential sponsor is complete, the care provider makes a release recommendation. UAC 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. ORR makes the final release decision. UAC Policy Guide § 2.7. 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. UAC Policy Guide § 2.7. 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. UAC Policy Guide § 2.7.4.

IV. FACTUAL AND PROCEDURAL BACKGROUND

As noted above, the three minor Petitioners entered the United States as unaccompanied children on April 31, 2025.

As set forth in the Declaration of Toby Biswas, filed herewith:

Petitioners O.J.R.A., S.A.R., and J.A.R. entered ORR custody on May 1, 2025, and were placed with Hanna's House in Commerce, California. At the time of initial placement, ORR began its normal sponsorship verification processes to process the children for release to a viable sponsor. This process continues. *Id.*, ¶ 18.

As of May 6, 2025, ORR identified the Petitioners' mother as a potential Category 1 sponsor ("Sponsor"). *Id.*, ¶ 19.

On May 23, 2025, ORR scheduled her for a fingerprint appointment. *Id.*, ¶ 20.

On that same date, ORR also identified the Petitioner's father as an Alternative Caregiver ("ACG") and a Household Member ("HHM)." *Id.*, ¶ 21.

On June 9, 2025, DNA testing was conducted for the Petitioners and the Sponsor. The results were received on July 3, 2025, positively confirming the relationship. *Id.*, ¶ 22.

On July 11, 2025, ORR identified Petitioners' maternal aunt as a potential Category 2 sponsor, since the Sponsor had no acceptable identity documents ("ID"). However, this potential sponsor subsequently withdrew from the process due to undisclosed criminal history. *Id.*, ¶ 23.

On July 17, 2025, ORR sent the Family Reunification Application (FRA) to the Sponsor. *Id.*, ¶ 24.

On July 22, 2025, a completed FRA was received from the Sponsor. *Id.*, ¶ 25.

On August 1, 2025, the Sponsor reported that she resigned from her employment. *Id.*, ¶ 26.

On August 14, 2025, the Sponsor confirmed using somebody else's Social Security number ("SSN") for employment purposes after providing a pay stub as proof of income with visible social security tax deductions. At that time, the Sponsor did not possess a legally acquired SSN/ITIN. *Id.*, ¶ 27.

On September 16, 2025, the case was submitted for an ID waiver, pursuant to UACB Policy Guide section 2.2.4, because the Sponsor did not provide any of the acceptable forms of ID. *Id.*, ¶ 28.

On December 9, 2025, ORR approved a discretionary Home Study after identifying a registered sex offender residing on the same property as the Sponsor. *Id.*, ¶ 29.

On December 11, 2025, the ID waiver was granted pending the results of the discretionary Home Study. *Id.*, ¶ 30.

On December 22, 2025, the Home Study was completed with a negative recommendation based on the presence of a sex offender residing at the same property as the Sponsor. *Id.*, ¶ 31.

On January 2, 2026, clinicians at Hannas House met with the Sponsor to begin developing a proposed safety plan. *Id.*, ¶ 32.

On January 21, 2026, the Sponsor requested approximately one month to break her current lease and to move into a new property. In the alternative, the Sponsor would work on a supervision plan, including an additional ACG, if needed, to supervise children while the Sponsor is at work. *Id.*, ¶ 33.

The proposed safety plan was subsequently finalized, with the Sponsor reporting she would no longer be working and would serve as the primary caretaker and providing the supervision plan for the children. *Id.*, ¶ 34.

On January 27, 2026, due to the Sponsor's provision of fraudulent documents, namely the proof of income documents showing the Sponsor's use of a fraudulent social security number, this case was submitted for an "exception" to the otherwise mandatory denial requirement outlined in UACB Policy Guide § 2.2.4. These requests are considered on a case-by-case basis. *Id.*, ¶ 35.

Should this exception be granted, the ORR/FFS will be able to review the totality of evidence and supporting documentation provided by the sponsor and collected during the assessment process to make a decision as to whether the Petitioners' release would result in a danger to themselves or the community. *Id.*, ¶ 36.

V. ARGUMENT

A. The TRO Application is Procedurally and Substantively Defective

The Petition essentially presents a claim for unreasonable agency delay claim in the processing of the biological mother's application for custody, i.e. her FRA. That delay complaint, however, is not a valid basis for seekiung a mandatory TRO that disrupts the status quo. It does not suffice to establish that the current custody is *unlawful*. Much less does it clearly establish such alleged unlawfulness to the extent that a mandatory TRO granting the ultimate relief requested is warranted and necessary.

The three Petitioners were already unaccompanied when they entered the United States; they were not in their mother's care at that time. As set forth in the Biswas Declaration, ORR has been proactively seeking out, arranging for, and facilitating the mother's application from very shortly after the unaccompanied minor Petitioners' arrival in the United States, identifying the mother as a potential sponsor as of May 6, 2025, and consistently facilitating the application process thereafter. *See* Biswas Decl., ¶¶ 18-26. ORR also identified other potential sponsors and investigated them, but they turned out to be unsuitable for various reasons. *Id.*

Following the receipt of the mother's completed FRA packet on July 22, 2025, it

has taken time to go through ORR's process. The mother's repeatedly shifting employment and housing status, combined with her unfortunate failure to provide accurate and truthful identification documents, has delayed the process of deciding her application for custody over her unaccompanied children.

As the Biswas Declaration discusses, similar disruptive events continued. On January 21, 2026, the mother requested to break her current lease and move into a new property. *See* Biswas Decl., ¶ 33. The proposed safety plan was quickly finalized, *id.* ¶ 34, but again changes like that require time.

On January 27, 2026, the case was submitted for an exception to the mandatory denial requirement. *Id.*, ¶ 35.

It is hoped and anticipated that a final decision will be made relatively soon. But the TRO Application does not meet the requirement of showing *unlawfulness* in custody. Nowhere does it establish that the current custody arrangement is contrary to the law.

Lacking that, the Ex Parte TRO Application repeatedly argues that the Petitioners are in "detention," but being in custody is not inherently "detention" (to take an obvious example, individuals under supervised release are in 'custody' but are not detained). Unaccompanied children may be placed by ORR in various different types of facilities by regulation, "including but not limited to shelters, group homes, individual family homes, heightened supervision facilities, or secure facilities, including RTCs" 45 CFR § 410.1102. Not being in a single preferred sponsor applicant's custody, i.e. that of the mother, is not "detention." Indeed, the Petitioners were already not in the mother's custody for months (at minimum) before she applied as a sponsor.

In essence, the Ex Parte TRO Application depicts the Petitioners not being within the mother's custody as if that is inherently an intolerable deprivation of their liberty. Placing children into the care of their immediate family members is certainly an ideal outcome when possible. But insofar as the Ex Parte TRO Application portrays the status quo as an automatic grave violation of their liberty, again, the minor Petitioners were

already unaccompanied and separated from their mother when they entered the United States. That status quo was not the government's decision. It was, presumably, their parents' decision. It was how they arrived in the United States. In response, ORR promptly took affirmative steps to locate sponsors, including their mother, and facilitate the application process so that they could be *released* to those potential sponsors. *See* Toby Biswas Declaration.

Insofar as the TRO Application portrays any delay in processing a FRA as if that delay and the investigations required for it is somehow inherently endless and unlawful, it is also noteworthy that in another recent habeas petition filed in this District, involving numerous different minor petitioners making similar claims against ORR, almost all of the many petitioners were thereafter released to sponsors, on a prompt timeframe, mooting their claims as their applications were resolved in due course. *See G.M.M. et al. v. Jessica Beltran et al.*, 5:26-cv-00085-SVW-PVC. The process takes some time, particularly when specific sponsor applicants have significant problems or shifting life circumstances, but that does not violate Due Process.

While the 'next friend' here portrays any delayed processing in a sponsorship cases as if that was inherently endless and a violation of Due Process, that is not true, and it again ignores the preexisting underlying state of affairs that created the status quo: Unaccompanied minors entering the United States without guardians, separated from their parents, before their being referred to ORR.

To be clear, the timely processing of applications is an important goal, particularly when it bears on the well-being of children. But TROs are not the answer relative to a longstanding status quo. The TRO Application wholly fails to meet its extremely heavy burden of proving *unlawfulness* in the current custody arrangement.

B. The Balance of Equities and Public Interest Supports Denial of a TRO

The final two factors required for a preliminary injunction or TRO—balancing of the harm to the opposing party and the public interest—merge when the Government is

the opposing party. *See, e.g., Nken, supra*, at 435. Courts must "pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v Romero-Barcelo*, 456 U.S. 305, 312-13 (1982). Moreover, any order that grants "particularly disfavored" relief by enjoining the governmental entity from administering the statute it is charged with enforcing, constitutes irreparable injury to the Defendants and weighs heavily against the entry of injunctive relief. *Cf. New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers).

Here, Petitioner seeks to disrupt the status quo by forcing ORR to abdicate its statutory obligations on a TRO basis. That is not appropriate, nor is it required. The Petitioners were already in ORR custody for months before the mother filed the FRA. They are not facing irreparable harm from the current longstanding status quo.

Moreover, Magistrate Judge Donahue had already ordered greatly expedited briefing of the petition [Dkt. no. 14], appropriately considering the timing concerns, including a February 3, 2026 deadline for the Respondents to answer. It was thus neither necessary nor proper for the next friend to then file a TRO Application on top of that expedited existing schedule. That is particularly so when the next friend had not even been granted guardian ad litem status yet—and yet they still nonetheless elected to file for a TRO on the Petitioners' behalf, disregarding the threshold procedural requirements.

In sum, the TRO Application fails to satisfy the many demanding requirements for seeking TRO relief, much less the extreme remedy of a mandatory TRO that disrupts the status quo and grants the ultimate relief at issue.

VI. CONCLUSION

The TRO Application should be denied.

Dated: January 30, 2026

Respectfully submitted,

TODD BLANCHE
Deputy Attorney General
BILAL A. ESSAYLI
First Assistant United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
DANIEL A. BECK
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section

/s/ Daniel A. Beck
DANIEL A. BECK
Assistant United States Attorney

Attorneys for Federal Respondents