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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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; NIKY HYMEL, Federal Field Specialist Supervisor, Office of Refugee Resettlement; ANDREW GRADISON, Assistant Secretary of the Administration of Children and Families; ANGIE SALAZAR, Acting Director of the Office of Refugee Resettlement; and ROBERT F. KENNEDY, Secretary of the U.S. Department of Health and Human Services,
Respondents.

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

Hon. Patricia Donahue

PETITIONERS' TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

[Supplemental Declaration of Emily Gerber Sugarman filed concurrently herewith]

INTRODUCTION

Petitioners are three unaccompanied minor siblings ("UCs") who were held in the custody of the Office of Refugee Resettlement ("ORR") at an ORR-subcontracted facility in Commerce, California, for approximately nine months. On January 16, 2026, Petitioners filed a Petition for Writ of Habeas Corpus (Dkt. No. 2), challenging the lawfulness of their continued custody and Respondents' failure to comply with the requirements of the Trafficking Victims Protection Reauthorization Act ("TVPRA") and the Due Process Clause of the Fifth Amendment. Petitioners alleged that ORR did not timely place them in the least restrictive setting appropriate to their circumstances and did not afford them the procedural protections required by the Fifth Amendment, thereby exceeding the scope of ORR's custodial authority.

While this habeas action was pending, ORR released Petitioners from custody and reunified them with their mother on February 4, 2026 (Supplemental Declaration of Emily Sugarman; ORR Notice of Reunification, Dkt. No. 20.) That release occurred only after the filing of Petitioners' Petition and subsequent Emergency Motion for Temporary Restraining Order and followed several months during which ORR declined to issue a final reunification decision or provide a lawful basis for Petitioners' continued detention. *Id.*

Respondents' post-filing release of Petitioners does not remedy the statutory and constitutional violations alleged in the Petition, nor does it render this case

moot. Petitioners seek an order from this Court declaring that their prolonged detention in ORR's custody and separation from their parent violated statutory and constitutional limits governing the custody of unaccompanied children. Petitioners' claims present questions of statutory interpretation and constitutional law properly before this Court under 28 U.S.C. § 2241, and Petitioners respectfully request that the Court grant the relief sought.

FACTS

The facts alleged in the Petition for Writ of Habeas Corpus are incorporated by reference (Petition for Writ of Habeas Corpus, Dkt. No. 2). The following summary supplements those facts: Petitioners are three unaccompanied minor siblings who entered the custody of the Office of Refugee Resettlement ("ORR") in May 2025 and were placed at an ORR subcontracted facility in Commerce, California. *Id.* Their mother promptly sought reunification and worked with ORR to complete all required steps. Respondents' Answer states that the mother's Family Reunification Packet ("FRP") was complete as of July 22, 2025 (Answer, Dkt. No. 19). ORR had verified the parent child relationship through DNA testing, and there was no finding at any time that the mother was unfit. (*Id.*; Supplemental Declaration of Emily Sugarman).

Petitioners' mother informed ORR of her living address on June 24, 2025, while relocating with the assistance of a women's center, and she began residing at that address permanently on July 29, 2025, where she has lived continuously since

(Dkt. No. 13, Ex. 4). Despite the completion of the FRP and ORR's knowledge of the proposed residence, ORR did not issue a decision on reunification, and the children remained detained for seven additional months.

Respondents' Answer provides that on September 16, 2025, ORR submitted an identification exception request for the mother based on the alleged lack of an acceptable form of identification, notwithstanding confirmed DNA verification of the parent child relationship and the absence of any finding of parental unfitness (Answer, Dkt. No. 19; Supplemental Declaration of Emily Sugarman).

On December 4, 2025, after months without a decision, counsel sent a written demand letter to ORR Headquarters requesting immediate reunification or, at a minimum, adjudication of the long pending FRP (Dkt. No. 13, Ex. 3). ORR did not respond to counsel. Instead, five days later, on December 9, 2025, ORR initiated a discretionary home study based on the proximity of a registered sex offender to the sponsor's residence – an issue ORR could have evaluated months earlier, given its longstanding knowledge of the address (Dkt. No. 13, Ex. 4). Around the same time, on December 11, 2025, ORR approved the previously pending identification exception, but only conditionally and pending the results of the home study (Answer, Dkt. No. 19).

On January 2, 2026, Hanna's House case manager Katherine Diaz informed counsel that the home study resulted in a negative recommendation solely due to the proximity of the registered sex offender and that ORR was *requiring* petitioner's

mother to relocate before reunification could be approved (Dkt. No. 13, Ex. 5).

On January 16, 2026, with the children having spent approximately nine months in ORR custody and no final reunification decision issued, Petitioners filed the instant Petition for Writ of Habeas Corpus (Petition for Writ of Habeas Corpus, Dkt. No. 2). On January 28, 2026, Petitioners filed an Emergency Motion for Temporary Restraining Order seeking immediate reunification (Emergency Motion for Temporary Restraining Order, Dkt. No. 13).

In their Opposition to the TRO, Respondents represented that clinicians at Hanna's House started developing a safety plan for Petitioners' release on January 2, 2026, and that the plan was finalized in early January (Opposition to TRO, Dkt. No. 16). In that same Opposition, Respondents asserted that ORR had identified an employment related Social Security issue on August 14, 2025, and that ORR submitted an exception request related to that issue on January 27, 2026 – approximately five months later (*Id.*).

On February 3, 2026, Respondents filed their Answer to the Petition, again referencing the same employment related Social Security issue (Answer, Dkt. No. 19). That same day, counsel for Petitioners received a letter from ORR approving reunification based entirely on the home study and safety plan (Supplemental Declaration of Emily Sugarman). On February 5, 2026, Respondents filed a Notice with the Court that reunification had been approved (ORR Notice of Reunification, Dkt. No. 20). The record does not explain why reunification did not occur earlier,

despite Respondents' representation that the safety plan had already been finalized.

Although reunification was approved on February 3, 2026, Hanna's House had not received confirmation from ORR and therefore did not release the children that day to their mother (Supplemental Declaration of Emily Sugarman). On February 4, 2026, undersigned counsel responded to ORR's email because the care providers had not released the children, and ORR ultimately released Petitioners from custody and reunified them with their mother that same day (*Id.)*. On February 7, 2026, the Court denied Petitioners' Motion for Temporary Restraining Order based on Respondents' representation to the Court that the children had been reunified with their mother (Denial of Temporary Restraining Order, Dkt. No. 21).

ORR's own records reflect that, throughout their time in custody, the children experienced significant and worsening emotional distress because of their prolonged separation from their mother (Dkt. No. 13, Ex. 6, ORR Clinical Notes). The records document symptoms consistent with sustained harm to the children's emotional well-being and development and reflect that the effects of this extended detention at a young age are likely to be enduring (*Id;* Dkt. No. 13, Ex. 1, Young Center Best Interest Determination).

Respondents' Answer largely confirms the factual chronology set forth in the Petition, including the completion of the minor Petitioners' FRP and the lack of any written reunification decision for approximately seven months thereafter (Answer, Dkt. No. 19).

ARGUMENT

I. Respondents' "Status Quo" Theory Misstates the TVPRA and Foundational Rule, and Cannot Justify Prolonged Detention Without Required Findings

Respondents contend that Petitioners' detention was lawful because the children entered the United States as "unaccompanied," and therefore their continued placement in ORR custody represents the "status quo." (Answer, Dkt. No. 19). Respondents further argue that Petitioners were not "detained" at all, asserting that ORR custody does not constitute detention and therefore does not implicate the liberty concerns Petitioners raise (*Id.* at 10:7–12). In Respondents' words, *"[t]he Petition depicts the Petitioners' status of not being within their mother M.R.A.'s custody as if that is inherently an intolerable deprivation of their liberty."* (Answer, Dkt. No. 19, at 10:4–6). That framing misstates both the TVPRA and Petitioners' claim.

Congress directed that unaccompanied children "shall be promptly placed in the least restrictive setting that is in the best interest of the child," considering danger to self, danger to the community, and risk of flight. 8 U.S.C. § 1232(c)(2)(A). Courts in this District have recognized that the TVPRA's mandatory language creates a substantive statutory entitlement, not a discretionary aspiration. The statute's command that children "shall" be promptly placed in the least restrictive setting in their best interest gives rise to a protected right. *See Immigrant Defs. L. Ctr. v. U.S. Dep't of Homeland Sec., No. CV 21-0395 FMO*

*(RAOX), 2025 WL 1191572, at *15 (C.D. Cal. Mar. 14, 2025).*

As the Ninth Circuit has recognized, the TVPRA framework reflects a care and placement-oriented mandate, not a detention-oriented mandate, and ORR's custody authority is therefore limited and conditional. *Flores v. Sessions*, 862 F.3d 863, 876 (9th Cir. 2017). ORR's 2024 Foundational Rule implements these statutory commands and makes the required process explicit. The Rule requires ORR to conduct individualized best interest and least-restrictive setting determinations, considering the factors specified in 45 C.F.R. §§ 410.1001 and 410.1103. It further requires ORR to adjudicate completed parent-sponsor applications within defined timelines — ten days for a category one sponsor, like M.R.A., absent an unexpected delay — and, if release is denied, to issue written notice stating the reasons and evidence and to provide appeal rights, with appeals ordinarily resolved within 30 days. 45 C.F.R. §§ 410.1205(b)–(c), 410.1206(f). The Rule also imposes supervisory review of pending sponsor applications at 90 days. 45 C.F.R. § 410.1207(a).

Petitioners do not contend that separation from a parent is inherently unlawful in all circumstances. Petitioners assert they were deprived of their liberty when ORR failed to make the determinations the TVPRA requires to justify continued custody within the limits of ORR's authority, within the timelines mandated by the Foundational Rule. Under the TVPRA, the relevant "status quo" is not continued government custody, but prompt movement toward release to the

least restrictive setting consistent with the child's best interests. Continued custody is conditioned on the government making the determinations Congress specified, including sponsor suitability and danger or flight risk. 8 U.S.C. § 1232(c)(3)(A). When those determinations are not timely made, prolonged custody exceeds the limits Congress authorized. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1178 (N.D. Cal. 2017); *Flores v. Lynch*, 828 F.3d 898, 908–09 (9th Cir. 2016).

In addition, Respondents' insistence that this case does not involve "detention" does not alter that analysis. Courts, including in this District, have repeatedly recognized that children subjected to prolonged government custody in ORR -directed placements are "in custody" for purposes of habeas review and constitutional scrutiny, regardless of whether the government labels that custody as care, placement, or detention. *See, e.g.*, *Lucas R. v. Azar*, No. 2:18-cv-05741-DMG-PLA, at 3–4 (C.D. Cal. Sept. 6, 2018); *N.B. v. Barr*, 2019 WL 4849175, at *4–5 (S.D. Cal. Oct. 1, 2019); *D.B. v. Cardall*, 826 F.3d 721, 740 (4th Cir. 2016); *Beltran v. Cardall*, 222 F. Supp. 3d 476, 486–87 (E.D. Va. 2016). More generally, civil custody that extends beyond statutory authorization is unlawful regardless of how it is characterized, because the Due Process Clause protects all individuals physically present in the United States' freedom from government custody or other forms of physical restraint, and the Government may not continue such restraint without the authority and justification Congress has provided. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v.*

Louisiana, 504 U.S. 71, 80 (1992)).

II. This Case Is Not About Administrative Delay or Parental Fault, but About Prolonged Detention That Violated Due Process

Respondents characterize this case as involving nothing more than administrative delay or circumstances attributable to Petitioners' mother (Answer, Dkt. No. 19, at 10:3–12). That framing misstates both Petitioners' claim and the constitutional allocation of responsibility once a parent seeks reunification.

Once a parent seeks reunification and completes the required sponsorship steps, the burden rests with ORR — not the parent — to justify continued separation. As courts have recognized, due process is lacking where "at no point was the onus on ORR to justify its deprivation of petitioner's fundamental parental rights." *Beltran v. Cardall*, 222 F. Supp. 3d 476, 485 (E.D. Va. 2016). Likewise, "the burden should be on ORR to show why its continued custody of a UAC is appropriate, rather than placing that burden on the parent." *Santos v. Smith*, 260 F. Supp. 3d 598, 613 (W.D. Va. 2017). Respondents' effort to recast prolonged custody as parental delay improperly inverts this framework.

Viewed through the proper lens, the record does not support Respondents' characterization of this case as one of mere administrative delay. By July 2025, ORR had verified the biological parent–child relationship through DNA testing, received a completed FRP, and knew where the children would reside upon release (Answer, Dkt. No. 19; Dkt. No. 13, Ex. 4). At that point, the statutory and constitutional objective was reunification. Instead of effectuating reunification,

ORR left Petitioners in institutional custody for months while their cases remained indefinitely "pending."

Respondents do not identify any point during that period at which ORR issued a timely, final, written reunification decision concluding that continued custody was necessary (See Answer, Dkt. No. 19). By continuing custody in the absence of such a decision, ORR imposed prolonged confinement without carrying its constitutional burden to justify that restraint. That continued custody necessarily prolonged the children's separation from their mother, resulting in documented emotional and developmental harm (Dkt. No. 13, Ex.'s 1, 6). Civil custody may not be extended indefinitely without adequate justification. *Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001).

Nor does the record support attributing the lack of reunification to parental conduct. ORR was aware of the proposed residence by June 24, 2025, and the mother moved into that residence in July of 2025 (Dkt. No. 13, Ex. 4). Nevertheless, reunification did not occur until after the filing of this lawsuit, approximately seven months later.

Respondents' reliance on a series of untimely internal steps taken long after reunification was sought does not satisfy due process. ORR did not initiate an identification-exception request until approximately two months after the completed reunification packet was submitted. ORR did not initiate a discretionary home study until December 2025 (approximately five months later), despite having

known the address since June 2025, and despite the mother having moved there in July 2025. ORR then told Petitioners' mother that she would be required to relocate based on the home study (Dkt. No. 13, Ex. 4). Finally, ORR did not submit a Social Security–related exception request until January 2026, several months after Respondents acknowledge the issue was first identified in August 2025 (Answer, Dkt. No. 19). Only after this litigation commenced, however, did Respondents advise that reunification had been approved, this time based on a safety plan that did not require relocation (Answer, Dkt. No. 19). Throughout this period, the children remained separated from their mother.

This lack of timely adjudication is further illustrated by Respondents' reliance on an employment-related Social Security issue as a justification for continued custody. (Answer, Dkt. No. 19). Based on counsel's review of the reunification updates regularly provided by Hanna's House to Petitioners' legal team, this issue was not identified, flagged, or referenced in *any* reunification communications prior to Respondents' Opposition, despite consistent updates from ORR throughout Petitioners' time in custody (Supplemental Declaration of Emily Sugarman).

To the extent Respondents suggest that unresolved administrative or employment-related issues justified prolonged custody, that position misstates the governing legal standard. Under the TVPRA and the Due Process Clause, continued custody requires an individualized determination that reunification

would pose a danger to the child or the community, or present a flight risk — not the mere existence of alleged administrative irregularities. See 8 U.S.C. § 1232(c)(2)(A), (c)(3)(A). Respondents do not contend, and the record does not reflect, that Petitioners' mother was ever found unfit or that reunification would endanger the children (Answer, Dkt. No. 19).

This pattern is constitutionally significant. Prolonged civil custody may not be maintained through serial, untimely administrative actions that delay reunification without culminating in a determination that separation is necessary. *Zadvydas*, 533 U.S. at 690–91. Due process requires that the government bear the burden of justifying continued custody through meaningful action, not maintain separation while repeatedly postponing reunification. *Beltran*, 222 F. Supp. 3d at 485; *Santos*, 260 F. Supp. 3d at 613. Procedural due process requires the government to provide an opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Courts considering prolonged custody of unaccompanied children have held that detention becomes unlawful where ORR fails to timely decide a completed reunification request or to clearly articulate the basis for continued custody. In *Doe v. Becerra*, the court explained that due process is violated where ORR's procedures leave families "unable to discern what standards are being applied or what steps would permit reunification," because such opacity "heightens the risk of erroneous deprivation." 787 F. Supp. 3d 1083, 1093–94 (E.D. Cal. 2025).

Petitioners do not contend that reunification adjudication must be immediate, nor do they argue that any delay, of any length, renders custody unlawful. Respondents focus on events that occurred earlier in the sponsorship process, but that framing avoids the dispositive period here: the months following completion of the FRP. Petitioners did not bring this habeas action until after ORR had confirmed that their parent-sponsor had completed all steps required of her and that the FRP was complete as of July 22, 2025. Despite that completion, Petitioners remained detained for weeks and then months without any written approval or denial. At that stage, continued custody was no longer a function of processing, but of inaction, which courts have recognized as constitutionally significant where liberty interests are at stake. *Mathews*, 424 U.S. at 333; *Doe*, 787 F. Supp. 3d at 1093–94.

III. Reunification Occurred Only After Voluntary Cessation and Declaratory Relief Remains Appropriate

Although Petitioners have now been reunified with their mother, that post-filing development does not moot this action. When a defendant ceases the challenged conduct only after litigation has commenced, courts apply the voluntary cessation doctrine, which recognizes that a defendant "cannot automatically moot a case simply by ending its unlawful conduct once sued." *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982). Otherwise, a defendant could engage in unlawful conduct, halt it to avoid judicial review, and then resume the

same conduct after the case is dismissed. *Id.*

The Ninth Circuit has emphasized that voluntary cessation does not moot a case where the cessation arises because of the litigation and the defendant fails to demonstrate that the challenged conduct cannot reasonably be expected to recur. *Sze v. I.N.S.*, 153 F.3d 1005, 1008 (9th Cir. 1998) (quoting *Pub. Utils. Comm'n of State of Cal. v. FERC*, 100 F.3d 1451, 1460 (9th Cir. 1996)). Where the government changes course only after being sued, it bears a heavy burden of showing that the challenged conduct will not resume. *City of Mesquite*, 455 U.S. at 289.

Courts have applied these principles in the family separation and immigration-separation and immigration-custody context where reunification occurs only after judicial intervention. In *Ms. L. v. U.S. Immigration & Customs Enforcement*, the government argued that post-filing reunification mooted the plaintiff's claims. The court rejected that argument, explaining that defendants "bear the burden of demonstrating that the challenged conduct cannot reasonably be expected to start up again," and holding that reunification achieved after litigation commenced did not satisfy that burden. 302 F. Supp. 3d 1149, 1156 (S.D. Cal. 2018) (citing *City of Mesquite*, 455 U.S. at 289).

This case fits that pattern precisely. By July 22, 2025, Respondents had verified the parent–child relationship through DNA testing, received a completed parent sponsor application, and knew the address at which Petitioners would reside

upon release (Answer, Dkt. No. 19; Dkt. No. 13, Ex. 4). Nevertheless, Petitioners remained in ORR custody for several more months while ORR raised a series of concerns — including identification issues, a discretionary home study, and an alleged Social Security related issue — none of which ultimately prevented reunification once this habeas action was filed (Answer, Dkt. No. 19).

During this period, ORR did not issue any final, written reunification decision (Answer, Dkt. No. 19). Only *after* Petitioners filed this habeas petition, and while an emergency motion seeking immediate reunification was pending, did Respondents approve reunification and effectuate Petitioners' release to their mother at the same residence ORR had long known (Answer, Dkt. No. 19; ORR Notice of Reunification, Dkt. No. 20). The sequence of events demonstrates that reunification occurred *because of* this litigation, not as the result of ordinary administrative processing.

Nor have Respondents disavowed the practices Petitioners challenge — maintaining the detention of children in institutional custody for extended periods after a parent seeks reunification without issuing a timely, written, appealable decision or making the findings required by statute to justify continued custody. To the contrary, Respondents' Answer continues to defend the lawfulness of that prolonged custody (Answer, Dkt. No. 19). Under *City of Mesquite* and *Ms. L.*, post-filing reunification under these circumstances does not deprive this Court of authority to determine the legality of the challenged conduct.

Respondents' own submissions further confirm that post-filing release is not unique to this case. In their Answer, Respondents cite another recent habeas action filed in this District and acknowledge that "almost all" of the minor petitioners in that case were "thereafter released to sponsors" once their applications were resolved. (Answer, Dkt. No. 19, at 11–12 (citing *G.M.M. et al. v. Beltran et al.*, No. 5:26-cv00085). That admission reflects a recurring pattern in which ORR resolves prolonged custody through post litigation release while continuing to assert that the underlying practices are lawful — precisely the scenario the voluntary-cessation doctrine is designed to address.

Independent of voluntary cessation, this case also remains live under the collateral consequences doctrine. A habeas action is not moot where unlawful government custody has produced continuing, nonspeculative consequences that a judicial declaration regarding the legality of that custody can meaningfully address. *Sibron v. New York*, 392 U.S. 40, 55–56 (1968); *Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001). Petitioners' federally appointed Child Advocate explained that "the longer a child is separated from their parents, the stronger that trauma "sets in," and warned that prolonged separation risks "lasting and perhaps irreversible emotional and psychological harm" (Dkt. No. 13, Ex. 1). Consistent with those concerns, ORR's own clinical records document anxiety, emotional dysregulation, and developmental regression during the months in which reunification remained unresolved. (Dkt. No. 13, Ex. 6). These ongoing effects confirm that the legality of

Respondents' prolonged custody is not a purely academic question, even after reunification.

Respondents' post-filing reunification constitutes voluntary cessation and does not moot this action. Declaratory relief is therefore appropriate. A narrow, retrospective declaration that Respondents' conduct in this case violated existing statutory and constitutional requirements governing ORR custody of unaccompanied children would resolve the parties' concrete legal dispute without requiring ongoing supervision or injunctive relief.

IV. Conclusion

Based on the record, Respondents have not followed their statutory or constitutional obligations. If any facts remain in dispute, Petitioners respectfully request that this Court hold an evidentiary hearing. For the foregoing reasons, this Court should grant the relief sought in Petitioners' Petition or hold an evidentiary hearing.

Respectfully submitted on February 10, 2026.

/s/ Emily Sugarman
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