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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' REPLY TO TRAVERSE

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The three minor Petitioners (via an asserted next friend) filed a habeas corpus petition [Dkt. no. 1] and an ex parte TRO application [Dkt. no. 11], seeking the release of the Petitioners to their sponsor applicant, their mother MRA.

Respondents filed an opposition to the TRO Application [Dkt. no. 16] and then an answer to the Petition [Dkt. no. 19]. Respondents noted that the Petition essentially complained of excessive delay in the processing of MRA's application, and that this was not a valid habeas claim. Respondents' Declaration [Dkt. no. 19-1] explained why the processing time was reasonable, and what it had consisted of, starting with the fact that ORR had timely initiated the reunification application on its own accord.

As set forth in the Supplemental Declaration of Toby Biswas [Dkt. no. 20], on February 4, 2026 the three Petitioners were released from ORR custody to that of their sponsor applicant. This matter is thus moot, as the Petitioners are no longer in the Respondents' custody, and it should be dismissed accordingly.

On February 10, 2026, Petitioners' counsel filed a Traverse [Dkt. no. 22] arguing that this matter was not moot. The Court has ordered a further response by the Respondents to that Traverse. But nowhere does the Traverse identify any live case or controversy, nor challenge any existing custody arrangement. The only argument Petitioners make is facially devoid of jurisdiction: "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."

Declaratory judgments remain just as subject to the case-or-controversy requirement as injunctions. The Traverse fails to identify any live case-or-controversy. It instead improperly asks the Court to condemn a custody arrangement that no longer exists, finding that it was improper, even if no longer extant. Habeas jurisdiction—

indeed Article III jurisdiction more generally—does not permit that.

To be clear, habeas petitioners sometimes argue that the precise same unlawful custody they complained of experiencing and were released from by a Court Order *may soon be imposed on them again*, and therefore contend their petition is not moot because they are likely to suffer that same harm soon. Setting aside whether that argument can be valid, however, it has no application whatsoever here, where the custody complained began with ORR's assumption of custody over the three minor Petitioners *because they entered the United States as unaccompanied minors*; their parents had left them alone to cross the United States border, failing to accompany them. The Petition did not complain that such initial custody by ORR was unlawful, nor was it. Rather, after being taken into ORR's custody, the Petition argued that it took too long to process MRA's sponsorship application, and that this delay was a basis for a habeas claim.

Regardless of whether the law would permit such a claim, it cannot be asserted now, because the custody complained of no longer exists. Petitioners cannot re-enter the United States, yet again, as unaccompanied minors, nor do they suggest that such an absurdity is now imminent for them at the hands of the Respondents.

Because it makes no sense, the Petitioners' Traverse thus does not even argue, much less establish, that such a repetition of unlawful custody is now threatened to Petitioners here. Instead, the Traverse asks for a classic impermissible advisory opinion about whether the alleged delay in processing their application, an application which is no longer pending because it was granted, was reasonable or not *in the past*.

Petitioners' Traverse does cite to one class action immigration case involving a different defendant, *namely ICE*, rather than ORR, and argues that they are analogous. *See MS. L., et al. v. U.S. Immigration and Customs Enforcement*, 302 F. Supp. 3d 1149 (S.D. Cal. 2018). For multiple reasons, that is entirely incorrect. Class actions operate under different rules, and it is well-established that mooting a particular representative plaintiff's claim does not inherently moot the class action.

But more importantly, the reason that the *MS. L.* case was not moot is contained in its very title: In that case it was the *mother* who was detained and separated, by *ICE* (not ORR), from her daughter. The mother conceivably faced a potential redetention by ICE, and thus had an argument that a new separated redetention of herself was conceivably proximate. Separation by again arresting that parent into custody by ICE, in the same manner, could recur. Nothing of the sort exists here, by contrast, where the mother is not detained by ICE, and there is no claim that ORR is about to re-assume custody of unaccompanied minors—who, after all, cannot re-enter the United States unaccompanied again, since they are already in the country, and are already in their mother's custody.

Last, even setting aside all the myriad other defects in Petitioners' arguments, the *MS. L.* case also involved a factual dispute over whether the reunification was accomplished in the normal course by regular release of the mother from detention. No evidence was presented to that court on that subject. As the court thus observed, "[n]either party has presented any evidence, however, as to the reason for Ms. L.'s parole from detention and reunification with her daughter." 302 F. Supp. 3 at 1157.

Here, by contrast, the declaration of Toby Biswas [Dkt. 19-1] provided a detailed chronology of why and how the application for sponsorship by the mother MRA, *which ORR itself identified and initiated in the first place*, was done in the normal course, and was indeed initiated prior to the litigation *by ORR*. Thus the Ms. L. citation is, on this independent basis, defective. Petitioners' Traverse argues that no final decision had yet been issued, but that would be the case for any case complaining of adjudication delay—and it does not rebut the detailed factual chronology set forth in the Biswas declaration and the supplemental Biswas declaration [Dkt. no. 20-1].

A habeas petition cannot be used to litigate the merits of a custody situation that no longer exists and is not threatened in the future. It is not an advisory opinion device used to elicit opinions of broader use. Indeed, that threat is significantly aggravated where, as here, the petition is actually brought by a "next friend"—an attorney at a

public interest organization—who has no close personal relationship to the petitioners, and who may thus be strongly incentivized to misuse an Article III court to instead solicit advisory opinions consistent with their own organizational values, using the dead habeas petition as a vehicle for those ambitions. That is not what habeas jurisdiction is for, nor Article III courts.

Indeed, even in cases where there is claim of threatened redetention that is not facially incoherent (as it is here), and even when the release was directly ordered by the District Court, and even when the custody arrangement could at least theoretically recur, District Judges in this District have still routinely found that the case has ended with the termination of the custody complained of.

For example, the Hon. Judge Birotte Jr. dismissed a preliminary injunction as moot, where the petitioner had been ordered released pursuant to the Court's order upon an *ex parte* TRO application. *See Hezardastan v. Noem,* No. 5:25-cv-03424-AB-DTB [Dkt. No. 13] (Jan. 5, 2026) (order dismissing case as moot).

The Hon. Judge Wright, II also dismissed a preliminary injunction as moot following petitioner's release from custody. *See Woldegabriel v. Noem,* 5:25-03369-ODW-PVC [Dkt. No. 11] (Dec. 29, 2025).

Similarly, the Hon. Judge Vera dismissed a writ of habeas corpus as moot after Petitioner was released upon a motion for preliminary injunction. *See Hashemi v. Noem,* No. 2:25-cv-10335-HDV-SP [Dkt. No. 19] (Jan. 7, 2026).

The Hon. Judge Olguin likewise denied a preliminary injunction and writ of habeas corpus as moot following the petitioner's release, finding "[P]etitioner's release does not give rise to collateral consequences that are redressable by success on his original petition. And Petitioner's contention that Respondents will be able to re-arrest and re-detain him appears to be speculative and hypothetical." *See Trujillo v. Janecka,* No. 5:25-cv-03002-FMO-SSC, 2026 WL 84313, at 1-2 (C.D. Cal. Jan. 12, 2026) (cleaned up).

The Hon. Judge Valenzuela declined to issue a preliminary injunction after petitioner's release, finding that petitioner could not show a likelihood of imminent irreparable harm. *See Petrosyan v. Bondi,* No. 5:25-cv-03240-CV-AS [Dkt. No. 11] (Dec. 31, 2025) (order discharging order to show cause).

Similarly, the Hon. Judge Bernal denied as moot a motion for reconsideration in a habeas case, finding claims of re-detention and third country removal to be too speculative to warrant relief. *See Hoang v. Santa Cruz,* No. 5:25-cv-02766-JGB-DSR [Dkt. No. 22] (Jan. 7, 2026) (order denying motion as moot).

In sum, there is no case-or-controversy left, and this case must be dismissed, rather than misused to elicit advisory opinions in an Article III District Court.

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Respectfully submitted,

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