UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

I.T., a minor, by and through Next Friend, B.V.T.R., and Z.T., a minor, by and through Next Friend, B.V.T.R.,

Plaintiff-Petitioners,

v.

ROBERT F. KENNEDY, JR. in his official capacity as Secretary of Health and Human Services; ANGIE SALAZAR, in her official capacity as Acting Director of the Office for Refugee Resettlement; ALEX ADAMS, in his official capacity as Assistant Secretary of the Administration for Children and Families; LORRAINE M. SANCHEZ, in her official capacity as Acting President and CEO of Cayuga Centers; U.S. Department of Health and Human Services; U.S. Office of Refugee Resettlement; Administration for Children and Families; Cayuga Centers,

Defendant-Respondents.

Civil Case No.: 1:26-cv-02563

ORAL ARGUMENT REQUESTED

PETITIONER'S MEMORANDUM OF LAW
IN SUPPORT OF EMERGENCY MOTION FOR A
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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PRELIMINARY STATEMENT

This case concerns IT, a [redacted] year-old child and citizen of Mexico, and his sister ZT, a [redacted] year-old child and citizen of Mexico, whom the United States Government has unlawfully detained and kept apart from their biological mother for approximately 220 days. This motion for a temporary restraining order is being filed now because, on information and belief, sometime before the shelter closes on March 31, IT and ZT will be removed to a different shelter, likely out of this jurisdiction and away from their mother. Despite the children's mother, BVTR, applying for IT's and ZT's release at the earliest time permitted by Respondents, the Office of Refugee Resettlement ("ORR") has failed to adjudicate BVTR's application for approximately 200 days and has failed to promptly place IT and ZT in the least restrictive setting that is in their best interest. During this time, BVTR has complied with each necessary requirement: BVTR has provided her Individual Taxpayer Identification Number ("ITIN"), submitted to DNA testing, and participated in a home study. Walsh Aff. ¶¶ 15, 25-26. On information and belief, ORR has recently confirmed that IT's and ZT's mother and Next Friend, BVTR, has completed the final steps necessary to release IT and ZT from ORR custody. *Id.* ¶ 26. ORR has failed to articulate any reason why IT and ZT cannot be released to their mother. In fact, its own home study has provided a positive recommendation for BVTR, indicating that there were no issues in the home. *Id.* ¶ 25. Moreover, BVTR requested a waiver of the requirement that she appear for an in-person ID verification, an appointment at which she understood she would likely be detained by federal immigration enforcement, and was subsequently informed that the requirement has been deemed complete by ORR. *Id.* ¶ 26. Nonetheless, IT and ZT have been languishing in detention since their arrival in the United States on August 19, 2025—alone—without the support and guidance of their mother, being irreparably and grievously harmed.

Within a few days of IT and ZT entering ORR's custody, ORR identified BVTR as a

Category 1 sponsor, the most preferential category. Walsh Aff. ¶ 12. As such, ORR was required to adjudicate BVTR's application within ten days, 45 C.F.R. § 410.1205(b), and, subject to an assessment of sponsor suitability, release IT and ZT from its custody "without unnecessary delay," with first order of preference being the children's parent, 45 C.F.R. § 410.1201(a). Instead, for the past approximately 200 days, ORR has imposed endless "requirements" and other procedural hurdles, without justification, and failed to adequately provide status updates despite repeated requests. Walsh Aff. ¶¶ 17-27. BVTR has complied with the necessary steps for sponsorship vetting, including background checks, DNA testing, and a home study that yielded a positive recommendation. *Id.* ¶ 25. Throughout this process, ORR has never articulated any reason why IT and ZT cannot be released to their mother. *Id.* ¶ 27.

Meanwhile, IT and ZT are suffering irreparable harm in government detention. Their prolonged detention and separation from their family are causing IT and ZT significant trauma, anxiety, and sadness. *Id.* ¶¶ 28-29. Since their arrival, IT and ZT have been confined in a restrictive setting, deprived of an adequate education, surrounded by strangers, and permitted only limited visits with their mother (approximately ten over the course of seven months), effectively isolating them from their mother and depriving them of her support and guidance. *Id.* ¶ 29.

Despite its legal obligations, ORR has far exceeded its statutory and regulatory deadlines to adjudicate IT's and ZT's mother's sponsorship application. ORR's failure to act "promptly" and release them "without unnecessary delay" violates IT's and ZT's constitutional rights to liberty, due process, and family integrity, as well as their statutory rights under the William Wilberforce Trafficking Victims Protection Reauthorization Act ("TVPRA") of 2008. 8 U.S.C. § 1232(c)(2)(A); 45 C.F.R. § 410.1201(a). ORR's continued delay and failure to release IT and ZT and reunite them with their mother also constitutes agency action that is arbitrary, capricious, and

not in accordance with the law under the Administrative Procedure Act.

Now, the government has declined to renew ORR's contract with the shelter at which IT and ZT are currently detained, informing counsel for IT and ZT of this fact only two days ago. On information and belief, IT and ZT are likely to be imminently removed within the next four days to a different shelter out of this jurisdiction and away from their mother.

Therefore, IT and ZT, by and through their Next Friend, BVTR, respectfully move this Court for a temporary restraining order and preliminary injunction pending the adjudication of the instant Petition. IT and ZT are likely to succeed on all of their claims and will suffer irreparable harm if Respondents continue to prolong their confinement and separation from their family. Petitioners respectfully request that this Court order Respondents to immediately release IT and ZT to the custody of their mother, without restraints on their liberty.

RELEVANT STATEMENT OF FACTS AND PROCEDURAL HISTORY

I. Detention and Separation of IT and ZT from Their Family.

IT was born in Mexico and is a [redacted] year-old child. ZT was born in Mexico and is a [redacted] year-old child. BVTR, IT's and ZT's mother and ORR sponsor, resides in Queens, New York. BVTR does not have a criminal history or a child protection history. Walsh Aff. ¶ 26.

On August 19, 2025, IT and ZT entered the United States in or around El Paso, Texas. IT and ZT were apprehended by Customs and Border Protection ("CBP") and designated as "unaccompanied children." *Id.* ¶ 9. The next day, DHS issued a Notice to Appear in immigration court to IT and ZT. *Id.* DHS filed the Notice to Appear with the New York Varick Street Immigration Court. *Id.*

On August 22, 2025, IT and ZT were transferred to the custody of ORR and transported to Cayuga Centers ("Cayuga") in New York, New York, an ORR-funded foster care facility. *Id.* ¶ 10. Cayuga is a transitional foster care program designed for short-term care. *Id.* ¶ 13. Children

held at the program reside with a foster family during the evenings and weekends and spend the weekdays at the program's facility or attending public school. *Id.*

BVTR quickly communicated to ORR that she was IT's and ZT's mother and wished to serve as their sponsor. On August 25, 2025 (less than one week after the children were designated as unaccompanied minors, and now over 200 days ago), Cayuga identified BVTR as a potential sponsor and designated her as Category 1, the most preferential category for sponsor release.[1] Walsh Aff. ¶ 12.

On September 3, 2025, Kids in Need of Defense ("KIND"), the legal service provider assigned to IT and ZT, met with the children for the first time and conducted a legal screening. During legal visit follow-up, Cayuga notified KIND that DNA testing would be required to reunify IT and ZT with their sponsor, BVTR, and that DNA testing appointments were scheduled for September 8, 2025 and September 10, 2025 for the children and BVTR, respectively. *Id.* ¶¶ 14-15. IT, ZT, and BVTR all complied with the DNA testing requirements. *Id.*

On September 3, 2025, KIND staff sought additional sponsorship information regarding BVTR, including the approximate timeline and any anticipated administrative concerns regarding her reunification with her children. *Id.* Cayuga referred the questions to a Federal Field Specialist

[1] ORR releases children to a sponsor in the following order of preference: parent; legal guardian; an adult relative; an adult individual or entity designated by the parent or legal guardian; a licensed program willing to accept legal custody; or an adult individual or entity when it appears that there is no other likely alternative to long term ORR care and custody. ORR has grouped unaccompanied children's cases into the following categories: Category 1: Parent or legal guardian I; Category 2: A sibling, grandparent, or other immediate relative (e.g., aunt, uncle, first cousin) who previously served as the child's primary caregiver; Category 3: An immediate relative who has not previously served as the child's primary caregiver; Category 4: Other sponsor, such as distant relatives and unrelated adult individuals; and Category 5: No sponsor identified. *See* ORR Policy Guide section 2.2.1.

("FFS") from ORR's DSA, who never responded. *Id.*

On September 24, 2025, IT and ZT attended their first Master Calendar Hearing and continued to comply with the requirements of their pending removal proceedings through several subsequent Master Calendar Hearings. *Id.* ¶ 16. As part of their efforts to comply with the court's requests for updates regarding IT's and ZT's pending reunification with their sponsor, KIND staff repeatedly requested status updates from Cayuga and the assigned DSA FFSs. *Id.* ¶¶ 14-26. Over a span of more than five months, between October 2, 2025 and March 3, 2026, KIND staff made repeated attempts to gather such information and offer necessary sponsorship documentation. *Id.* Each time, Cayuga staff—including a new case manager—either did not respond or merely responded that there were no updates regarding IT's and ZT's reunification and that they were continuing to gather documentation from BVTR, with no further details. *Id.* On December 2, 2025, Cayuga staff referred another status update from KIND to two additional DSA FFSs, but neither ever responded, even after KIND followed up approximately one week later. *Id.* ¶ 20. From March 1-3, 2026, KIND staff repeatedly contacted Cayuga and the DSA FFSs in advance of a March 4, 2026 Master Calendar Hearing for IT and ZT and raised the importance of complying with the judge's requests for an update. *Id.* ¶ 25. A DSA FFS responded on the day of the hearing with the pending items for BVTR's sponsorship. *Id.* BVTR promptly completed all of these items. *Id.*

Meanwhile, BVTR continued to comply with the sponsorship vetting process. In February 2026, ORR also conducted a home study—a discretionary measure—of BVTR, as part of her sponsorship application. The home study received a positive recommendation, indicating that there were no issues in the home. *Id.* As directed by the DSA FFS, BVTR also applied for an ITIN, a new vetting requirement since July 2025, and dutifully submitted to multiple background checks. *Id.*

To date, neither ORR nor Cayuga has communicated any concern to BVTR or to IT's and ZT's legal advocates that BVTR is not a suitable sponsor for IT and ZT. *Id.* ¶ 27. BVTR's sponsorship application has now been pending for more than 200 days. As a result, IT and ZT, [redacted] year-old and [redacted] year-old children, respectively, have been separated from their mother and held in governmental custody for 218 days in violation of their statutory and constitutional rights. Now, not only has ORR failed to release the children, but, on information and belief, IT and ZT are likely to be removed within the next four days to another detention center, potentially further away from their mother.

II. BVTR's Efforts to Reunite with IT and ZT

When IT and ZT were transferred to ORR custody on or around August 22, 2025, BVTR immediately identified herself as IT's and ZT's mother and stated that she wished to serve as their sponsor. Walsh Aff. ¶ 12. After a DSA FFS initiated BVTR's sponsorship application on or around September 3, 2025, months passed without any further communication, request, or status update. During this time, BVTR collected the requisite documents and immediately complied with the necessary steps for her sponsorship application, while IT and ZT continued to appear in their removal proceeding hearings. *Id.*

IT's and ZT's prolonged detention and separation from their mother are part of a nationwide trend impacting youth in ORR custody. In fiscal years 2021 through 2024, the average length of time a child remained in ORR custody ranged from 27 days to 33 days.[2] However, that

[2] Neha Desai, Melissa Adamson, & Ryan Matlow, *The Unraveling of ORR: A Quick and Calculated Undoing of a System Intended to Protect Children*, at 11, Nat'l Ctr. For Youth Law (Sept. 2025), *available at* https://youthlaw.org/resources/the-unraveling-of-orr-a-quick-and-calculated-undoing-of-a-system-intended-to-protect-children/.

average has increased dramatically since January 2025, jumping to 112 days in March 2025, 154 days in June 2025, 182 days in August 2025, and 185 days in November 2025.[3] Releases to sponsors have also dropped sharply, from 1,858 releases in February 2025, to 343 releases in March 2025, to 45 releases in April 2025.[4] In November 2025, ORR only released 16 children to sponsors nationwide.[5] In February 2026, the number of children released to sponsors nationwide increased to 119, still constituting only 6.4% of the number of children released 12 months earlier in February 2025.[6]

Under these circumstances, IT and ZT are unlikely to be released without judicial intervention.

III. Ongoing Harm to IT and ZT in ORR Custody

IT and ZT are [redacted] year-old and [redacted] year-old children, respectively, who have been detained, separated from their mother, and socially isolated, without access to proper schooling for several months. They have been forced to navigate removal proceedings in immigration court while detained and separated from their mother. For these and other reasons, it is in IT's and

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[3] *Id.*

[4] *Id.*

[5] *Data: Released to Sponsors*, ORR, https://acf.gov/orr/about/ucs/facts-and-data (last accessed March 28, 2026) (hereinafter "ORR Data: Released to Sponsors"). This nationwide trend has been widely documented. *See, e.g.*, Mica Rosenberg, *et al.*, *ICE Sent 600 Immigrant Kids to Detention in Federal Shelters This Year. It's a New Record*, ProPublica (Nov. 24, 2025), https://www.propublica.org/article/ice-detentions-immigrant-kids-family-separations; Julia Lurie, *"The Children Are Being Used as Bait": Thousands of Kids Are Stuck in Immigration Facilities With No End in Sight*, Mother Jones (May 12, 2025), https://www.motherjones.com/politics/2025/05/unaccompanied immigrant-children-trump-ice-orr-shelters/.

[6] ORR Data: Released to Sponsors.

ZT's best interest to be released to their mother immediately. Walsh Aff. ¶¶ 29-32.

The serious harms caused by the prolonged detention of immigrant children are well documented. In 2018, under similar circumstances, ORR policy changes caused unaccompanied children's length of custody in ORR to increase significantly, with children spending months in congregate care designed to hold them for only a few weeks.[7] The then-Assistant Secretary for the Administration for Children and Families later conceded that the policy did not "add[] anything to the protection and safety of the children."[8] To the contrary, the extended length of stay in ORR custody significantly harmed children's mental health and well-being.[9]

IV. ARGUMENT

A. Petitioners Are Likely to Succeed on the Merits of Constitutional, Statutory, and Regulatory Claims.

The instant Petition alleges that ORR's prolonged detention and separation of IT and ZT from their family violates their substantive and procedural due process rights, their statutory rights, and their regulatory rights under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701, *et seq.* Petitioners satisfy every required element for this Court to grant a temporary restraining order and preliminarily enjoin Respondents from continuing to unlawfully detain and separate them

[7] *See, e.g.*, Dep't of Health and Hum. Servs., Office of the Inspector Gen., *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody*, 13 (Sept. 2019), https://perma.cc/YLT7-R3HP (hereinafter "HHS OIG Report").

[8] John Burnett, *Several Thousand Migrant Children In U.S. Custody Could Be Released Before Christmas*, NPR (Dec. 18, 2018), https://perma.cc/6WHS-BNR6.

[9] *See, e.g.*, HHS OIG Report, 12-13 ("According to facility staff, longer stays resulted in higher levels of defiance, hopelessness, and frustration among children, along with more instances of self-harm and suicidal ideation.").

from their family.

The standards for a temporary restraining order and preliminary injunctive relief are identical. *See Andino v. Fischer*, 555 F. Supp. 2d 418, 419 (S.D.N.Y. 2008) ("The standard for granting a temporary restraining order and a preliminary injunction pursuant to Rule 65 of the Federal Rules of Procedure are identical."). Petitioners must demonstrate that (1) they are likely to succeed on the merits of their claims, (2) they are likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). When the government is a party, the balance of equities and public interest merge. *Nken v. Holder,* 556 U.S. 418, 435 (2009); *see also, e.g., New York v. Dep't of Homeland Sec.,* 969 F.3d 42, 58-59 (2d Cir. 2020).

Petitioners should be granted temporary and preliminary injunctive relief because they are likely to succeed on the merits of their constitutional, statutory, and regulatory claims and will continue to suffer irreparable harm. Moreover, there is no government or public interest in continued violation of the Constitution. Under the circumstances presented herein, no security bond is required under Federal Rule of Civil Procedure 65(c).

B. Petitioners Are Likely to Prevail on Their Due Process Claims.

1. Petitioners Are Likely to Succeed on the Merits of Their Fifth Amendment Substantive Due Process Claim.

IT and ZT have a protected liberty interest in being reunited with their mother. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *Troxel v. Granville*, 530 U.S. 57, 65 (2000). Courts have repeatedly held that it is a violation of substantive due process under the Fifth Amendment of the Constitution to separate children from their parents absent a clear showing that the parent is unfit or is otherwise endangering the child. *See, e.g., Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) ("[T]he Due Process Clause would be offended if a State were to attempt to force the breakup of

a natural family . . . without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest.") (quotation marks omitted); *U.S. v. Loy*, 237 F.3d 251, 269-70 (3d Cir. 2001) ("[W]here there is insufficient evidence to support a finding that children are potentially in danger from their parents, the state's interest cannot be said to be 'compelling,' and thus interference in the family relationship is unconstitutional."); *Ms. L. v. U.S. ICE*, 310 F. Supp. 3d 1133, 1142-46 (S.D. Cal. 2018) (finding likely substantive due process violation stemming from "zero tolerance" policy of family separation); *J.S.R. by and through J.S.G. v. Sessions*, 330 F. Supp. 3d 731, 741-742 (D. Conn. 2018) (finding likely substantive due process violation when government separated immigrant children from parents and noting Government failed to establish "a compelling reason for depriving the children of their family integrity—depriving them of their primary and only consistent source of support—or that its policy was narrowly tailored to achieve that compelling reason"). Moreover, the children's status as immigrants does not diminish their right to due process of law by the Fifth and Fourteenth Amendments. *A.N.P.S. v. Salazar*, 2025 WL 3707333, at *4 (N.D. Ill. Dec. 22, 2025) (citing *Plyler v. Doe*, 457 U.S. 202, 210 (1982)).

Respondents' continued separation of IT and ZT from their mother violates substantive due process because Respondents lack any compelling interest in depriving IT and ZT of their family integrity. Respondents have not raised any concerns as to BVTR's ability to provide for IT's and ZT's physical or emotional well-being, nor have they provided any justification for IT's and ZT's continued detention. *See* 45 C.F.R. § 410.1205(a); *see also* 8 U.S.C. § 1232(c)(3)(A). And they certainly cannot demonstrate that keeping IT and ZT in detention, separated from their mother, is in their best interest. To the contrary, on information and belief, it is in IT's and ZT's best interest to be released to their mother immediately. Walsh Aff. ¶¶ 29-32. As such, Respondents lack the

constitutionally required justification for the ongoing separation of IT and ZT from their family, and Petitioners are likely to succeed on their substantive due process claim.

C. Petitioners Are Likely to Succeed on the Merits of Their Fifth Amendment Procedural Due Process Claim.

Procedural due process requires that the government not deprive an individual of their constitutional rights without meaningful notice and an opportunity to be heard before a neutral arbiter to protect against the risk of erroneous deprivation. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); U.S. Const. amend. V. Due process also requires that government action be rational and non-arbitrary. *U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

A child's liberty interest in being free from confinement is no narrower than that of an adult. *In re Gault*, 387 U.S. 1, 13 (1967); *Reno v. Flores*, 507 U.S. 292, 316 (1993). Minors such as IT and ZT retain a strong interest in being free from unnecessary governmental interference with their liberty. *A.N.P.S.*, 2025 WL 3707333, at *4. Moreover, as explained above, children also have a well-recognized liberty interest in the "preservation of family integrity." *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977); *see also Kia P. v. McIntyre*, 235 F.3d 749, 759 (2d Cir. 2000) (explaining that children have a "constitutionally protected liberty interest in not being dislocated from the emotional attachments that derive from the intimacy of daily family association"); *D.B. v. Cardall*, 826 F.3d 721, 740 (4th Cir. 2016) (stating that children have a fundamental "familial right to be raised and nurtured by their parents"); *Troxel,* 530 U.S. at 65 ("[T]he interest of parents in the care, custody, and control of their children [] is perhaps the oldest of the fundamental liberty interests recognized by [the Supreme] Court.").

Respondents' policies and actions, as set forth above, have deprived IT and ZT of their fundamental rights to family integrity and freedom from confinement without constitutionally sufficient due process. As in similar cases of immigrant children separated from their parents, the

sponsorship process afforded to effectuate the release of IT and ZT to their mother "display[s] several significant deficiencies, especially in view of the magnitude of the private interest at stake." *Maldonado v. Lloyd,* 2018 WL 2089348, at *8 (S.D.N.Y May 4, 2018). Under the facts of this case, the Court should find that IT's and ZT's continued detention is a violation of their procedural due process rights and order their immediate reunification with their mother.

First, ORR has improperly placed the burden of proof on BVTR to demonstrate her suitability as a sponsor, rather than on ORR to justify its continued custody of IT and ZT. Pursuant to the *Mathews* framework, ORR must assess sponsorship applications by parents, in particular, in light of the fundamental liberty interest in family integrity. That means putting the burden on the agency to justify continued detention. *See Maldonado*, 2018 WL 2089348, at *9 ("[W]hen a parent (rather than another relative or a friend) seeks reunification with her child, ORR procedures improperly place the burden of proof on the parent to demonstrate suitability rather than on ORR to justify its continued custody of the child."); *Santos v. Smith*, 260 F. Supp. 3d 598, 613 (W.D. Va. 2017) ("[A]t least when a parent is requesting reunification, the burden should be on ORR to show why its continued custody of [an unaccompanied child] is appropriate, rather than placing that burden on the parent."); *Beltran v. Cardall*, 222 F. Supp. 3d 476, 485 (E.D. Va. 2016) ("Once the government decides to withhold a child from a parent's care, 'the state has the burden to initiate' proceedings to justify its action." (internal citation omitted)).

Second, ORR has arbitrarily delayed the adjudication of IT's and ZT's release to the custody of their mother, by (among other things) delaying the reunification process without justification, in violation of its statutory requirements, even when the home study yielded a positive recommendation. Walsh Aff. ¶ 25.

Finally, Respondents have violated IT's and ZT's right to procedural due process through

inordinate delay in violation of the agency's own mandate to promptly reunite children with their parents wherever possible. 8 U.S.C. § 1232(c)(2)(A); 45 C.F.R. § 410.1205(b) (requiring that family member sponsor applications be adjudicated within 10 days). In the present case, it has been approximately 200 days since BVTR filed her sponsorship application, and ORR has still not rendered a final decision or offered any explanation for its delay. Walsh Aff. ¶ 27. BVTR has promptly provided all requested documents to ORR, and she has participated in a background check, child welfare check, home study, and DNA testing. *Id.* ¶¶ 25-26. Although no doubts about IT's and ZT's parentage, potential risk of harm to IT and ZT, concerns about IT's and ZT's safety to self or others, or BVTR's fitness to provide for IT's and ZT's physical and mental well-being have been raised, ORR has failed to issue a decision on her sponsorship application and IT and ZT continue to be held in government custody. *Id.* ¶¶ 25-27.

As IT and ZT have been deprived of constitutionally meaningful process to facilitate their release to their family, they are likely to succeed on their procedural due process claim.

D. Petitioners Are Likely to Prevail on Their Statutory Claims.

Congress enacted the TVPRA specifically to facilitate the safe, speedy release and minimally restrictive placement of unaccompanied children. *See, e.g.*, 154 Cong. Rec. S10887 (Dec. 10, 2008). The TVPRA tasks ORR with ensuring that unaccompanied children are "promptly placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). This is usually with a sponsor, with preference given to parents. 45 C.F.R. § 410.1108(a). *See, e.g.*, *Santos*, 260 F. Supp. 3d at 598 ("Pursuant to the *Flores* agreement and the TVPRA, ORR should release to a parent, if available . . . ."). In determining the least restrictive setting that would be in the best interest of the child, the TVPRA authorizes ORR to "consider danger to self, danger to the community, and risk of flight." 8 U.S.C. § 1232(c)(2)(A).

Respondents have failed to act promptly. On August 25, 2025, six days after IT and ZT

entered the United States, BVTR was identified by Cayuga as a potential sponsor and designated as Category 1, the most preferential sponsor category. Walsh Aff. ¶ 12. Although federal regulations state that ORR is required to adjudicate a sponsorship application from a child's parent, legal guardian, sibling, or grandparent within ten days of receipt, BVTR's sponsorship application has remained pending for approximately 200 days. 45 C.F.R. § 410.1205(b).

Moreover, there is no indication that BVTR is anything other than capable, proper, and fit, and IT and ZT certainly do not present any flight risk or danger to the community. Walsh Aff. ¶¶ 25-27. Per federal regulations, ORR may only deny a sponsorship application if it determines that the potential sponsor cannot provide for the physical and mental well-being of the child or that the placement would result in danger to the child or the community. *See* 45 C.F.R. § 410.1205(a); *see also* 8 U.S.C. § 1232(c)(3)(A). ORR has made no showing or even a suggestion that BVTR cannot provide for IT's and ZT's physical and mental well-being. And it has provided no individualized reason as to why it continues to impose increasingly invasive burdens on BVTR to receive her children from their custody. Walsh Aff. ¶ 27. Each hurdle runs contrary to IT's and ZT's best interest, as it prolongs their detention and compounds the daily harm they suffer.

Respondents have utterly failed to "promptly" place IT and ZT in the least restrictive setting and have completely disregarded their best interest. 8 U.S.C. § 1232(c)(2)(A). As such, Petitioners are likely to succeed on their claim that Respondents have violated their statutory rights under the TVPRA.

E. Petitioners Are Likely to Prevail on Their Administrative Procedure Act Claims.

Under the APA, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or

limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C). The APA provides a right to judicial review to "a person suffering legal wrong because of agency action or adversely affected or aggrieved by agency action within the meaning of a relevant statute." 5 U.S.C. § 702. The APA likewise provides a right of judicial review for "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704.

IT and ZT are "suffering legal wrong" because Respondents have unlawfully delayed the adjudication of BVTR's sponsorship application over the course of approximately 200 days, and IT and ZT have been "adversely affected" by ORR's refusal to release them to their mother. 5 U.S.C. § 702. In this case, Respondents' failure to adjudicate is actionable by this Court, insofar as Respondents' actions also have determined the "rights and obligations" of IT and ZT and created "legal consequences" of continued detention and separation from their family, in violation of IT's and ZT's fundamental right to family integrity. *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (stating that "final agency action" subject to judicial review must "mark the 'consummation' of the agency's decision-making process" and "be one by which 'rights or obligations have been determined' or from which 'legal consequences will flow'" (internal citations omitted)). *See also Duchesne v. Sugarman*, 566 F.2d at 825; *Kia P. v. McIntyre*, 235 F.3d at 759. Accordingly, IT and ZT are entitled to judicial review of ORR's actions under 5 U.S.C. §§ 702 and 704. IT and ZT have no recourse to judicial review other than by this action.

IT and ZT are likely to succeed in their APA claim that Respondents' actions are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Specifically, Respondents have violated their statutory mandate to "promptly" place the children "in the least restrictive setting" that is in their best interest, 8 U.S.C. § 1232(c)(2)(A), as the agency has failed to adjudicate their mother's sponsorship application for approximately 200

days without providing any reasonable explanation for its delay.

Respondents have likewise acted arbitrarily and capriciously by imposing requirements without providing adequate justification and then failing to make it possible for IT and ZT and BVTR to comply. Respondents required a home study without justification or demonstrated need.[10] Walsh Aff. ¶ 25. Respondents have also imposed a DNA testing requirement, an invasive use of government authority, even though no doubts have been raised as to BVTR's parentage. Although ORR has authority to impose sub-regulatory requirements, those requirements must still align with ORR's governing regulations and core statutory mandate: to "promptly" place a child "in the least restrictive setting that is in the best interest of the child" and release children from its custody "without unnecessary delay." 8 U.S.C. § 1232(c)(2)(A); *see also* 45 C.F.R. § 410.1003(f). When ORR's sub-regulatory requirements conflict with its statutory mandate and no justification can be provided, that requirement becomes arbitrary and capricious. *See F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009) (explaining that "it would be arbitrary and capricious" for an agency to "depart from a prior policy *sub silentio* or simply disregard rules that are still on the books"); *see also Saget v. Trump*, 375 F. Supp. 3d 280, 354 (E.D.N.Y. 2019) ("Agency action is arbitrary and capricious when the agency departs from prior policy without explanation." (internal citation omitted)).

In light of the foregoing, Petitioners are likely to succeed in their claim that Respondents'

[10] Absent specific circumstances, home studies are not a required part of the sponsor suitability assessment, but ORR "may, in its discretion, initiate home studies if it determines that a home study is likely to provide additional information which could assist in determining that the potential sponsor is able to care for the health, safety, and well-being of the unaccompanied child." 45 C.F.R. § 410.1204(c). Requiring a "discretionary" home study is not an exercise of discretion at all and runs afoul of the federal regulations when the home study is without basis, cannot be promptly completed, and a child is being held in a restrictive setting, not in their best interest.

continued detention of IT and ZT and failure to release them to their fit sponsor is arbitrary, capricious, and not in accordance with the law. 5 U.S.C. § 706(2)(A)-(C).[11]

V. Petitioners Have Suffered and Will Continue to Suffer Irreparable Harm Absent Emergency Injunctive Relief.

Respondents have already caused and, unless enjoined by this Court, will continue to cause irreparable harm to IT and ZT. "Irreparable harm is injury that is neither remote nor speculative, but actual and imminent and that cannot be remedied by an award of monetary damages." *New York ex rel. Schneiderman v. Actavis PLC,* 787 F.3d 638, 660 (2d Cir. 2015) (internal quotation marks omitted). "When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir. 1984) (quoting 11 C. Wright & A. Miller, FEDERAL PRACTICE AND PROCEDURE, § 2948, at 440 (1973)); *accord Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("[T]he deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Having established that a constitutional violation has occurred, *supra* Sec. I(A), (B), and (C), Petitioners are entitled to a presumption of irreparable injury. *J.S.R.*, 330 F. Supp. 3d at 742.

Moreover, courts have repeatedly recognized that the prolonged detention of children and family separation constitute irreparable harm. *See Stanley v. Illinois,* 405 U.S. 645, 647 (1972)

[11] Respondents have also failed to abide by their obligation under the Foundational Rule to promptly place IT and ZT in the least restrictive setting that is in their best interest. 45 C.F.R. § 410.1003(f). Therefore, Petitioners are also likely to prevail on their claim that Respondents have failed to follow "their own existing valid regulations" pursuant to *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). *See also Vitarelli v. Seaton*, 359 U.S. 535, 545 (1959) (clarifying that when an agency fails to comply with binding regulations, such actions are "not in accordance with law").

(delay in parental custody causes intangible deprivation, uncertainty, and dislocation); *J.S.R.*, 330 F. Supp. 3d at 742-43 (separation of immigrant children from parents caused irreparable harm); *Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011) ("In addition, as we have previously held, '[o]ther important [irreparable harm] factors include separation from family members, medical needs, and potential economic hardship.'" (quoting *Andreiu v. Ashcroft*, 253 F.3d 477, 484 (9th Cir. 2001) (en banc)).

The serious harm of prolonged detention on immigrant children is well documented. In 2018, under similar circumstances, ORR policy changes caused unaccompanied children's length of custody in ORR to increase significantly, with children spending months in congregate care designed to hold children for only a few weeks.[12] Predictably, these extended lengths of stay in ORR custody caused significant harm to children's mental health and well-being.

A substantial amount of scholarship shows the measurable, lasting harm that immigration detention can have on young children. There "is no evidence that any amount of time in detention is safe for children, detention itself poses a threat to child health."[13] As the American Academy of Pediatrics and other national medical organizations have concluded, "even short periods of detention can cause psychological trauma and long-term mental health risks for children,"[14] including developmental delays, post-traumatic stress disorder, anxiety, depression, and suicidal

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[12] *See, e.g.*, Dep't of Health and Hum. Servs., Office of the Inspector Gen., *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody*, 13 (Sept. 2019), https://perma.cc/YLT7-R3HP.

[13] AMERICAN COLLEGE OF PHYSICIANS, *Joint Letter to Administration Opposing Family Detention* (Mar. 25, 2025), https://www.acponline.org/sites/default/files/acp-policy-library/letters/joint_letter_to_administration_opposing_family_detention_2025.pdf.

[14] *Id.*

ideation.[15] The impact of this trauma, even for short periods of detention, can be lifelong.[16] Here, irreparable harm is even more likely if the children are not released and are relocated away from their mother.

VI. The Balance of Hardships and Public Interest Weigh Heavily In Petitioners' Favor.

The final two factors for injunctive relief—the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009); *see also New York v. Dep't of Homeland Sec.,* 969 F.3d 42, 58-59 (2d Cir. 2020). Here, Petitioners face weighty hardships, namely the deprivation of their constitutional, statutory, and regulatory rights to family unity, the deprivation of liberty, deteriorating mental and emotional health, and educational deprivation. Respondents, by contrast, will face no hardship if this Court grants the relief requested. All that is required of the Respondents is to stop violating the law by immediately releasing IT and ZT to the custody of their mother without further restraints on their liberty.

Moreover, for 218 days, Respondents have already expended significant resources to retain custody over IT and ZT and impose sponsorship requirements on their mother. After BVTR has complied with every step of the sponsorship process, "additional process at this point would be of marginal benefit." *Beltran,* 222 F. Supp. 3d at 489.

Finally, Respondents "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). The public interest is served

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[15] *See* Julie M. Linton, *et al.*, *Detention of Immigrant Children*, PEDIATRICS (May 1, 2017), https://doi.org/10.1542/peds.2017-0483.

[16] Elizabeth S. Barnert, M.D., et al., *How Does Incarcerating Young People Affect their Adult Health Outcomes?*, PEDIATRICS (Feb. 1, 2017), https://pmc.ncbi.nlm.nih.gov/articles/PMC5260153/ (showing incarceration of even less than one month "predicted subsequent depressive symptoms" in adulthood).

by the faithful execution of the immigration laws, and that interest includes respect for protections Congress has enacted and to which the United States has committed itself by treaty. *Tesfamichael v. Gonzales,* 411 F.3d 169, 178 (5th Cir. 2005) (recognizing "the public interest in having the immigration laws applied correctly and evenhandedly"); *Lujan v. Defs. of Wildlife,* 504 U.S. 555, 576 (1992) (discussing "the public interest in Government observance of the Constitution and laws").

CONCLUSION

For the foregoing reasons, the Plaintiff-Petitioners respectfully request that the Court grant their Motion for a Temporary Restraining Order and Preliminary Injunction.

Dated: March 28, 2026

Respectfully submitted,

By: /s/ Jay Holtmeier

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CERTIFICATION OF COMPLIANCE PURSUANT TO LOCAL RULE 7.1(C) AND INDIVIDUAL RULE 3(D)

Pursuant to Southern District of New York's Local Rule 7.1(c) and Rule 2(B) of this Court's Individual Rules and Practices in Civil Cases, I hereby certify that the above memorandum is 6,296 words and complies with the formatting requirements specified therein.

/s/ Jay Holtmeier
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