IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA

G.G. AND D.G., Petitioners,	)	Case No. 2:26-cv-380
v.	)	
MARKWAYNE MULLIN, Secretary of Homeland Security; ROBERT F. KENNEDY, JR., Secretary of Health and Human Services; ANGIE SALAZAR, Acting Director of the Office Of Refugee Resettlement; MARVENA TWIGG, President of the National Youth Advocate Program, Respondents.	)	

PETITION FOR A WRIT OF HABEAS CORPUS

COMES NOW G.G. and D.G., the Petitioners, represented by their undersigned Pro Bono counsel, and very respectfully request that this Honorable Court issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, ordering their immediate release.

Introduction

G.G. and D.G., the Petitioners, are 17-year-old and 10-year-old immigrant children and siblings from Haiti whom Respondents have detained for nearly **three months**. G.G.'s and D.G.'s mother, who resides in the U.S., petitioned to sponsor G.G. and D.G. immediately after they entered the U.S. on or about June 2, 2026. Since then, G.G.'s and D.G.'s mother[1] has successfully completed proof of income and address, fingerprinting, and background checks. Nonetheless, G.G.

[1] DNA testing and in-person ID verification are currently being processed.

and D.G. remain separated from their mother, who resides in this country, has successfully completed a Family Reunification Application ("FRA"), and wants to relieve her children of their isolation. Petitioners seek release from government detention to the custody of their mother.

The Trafficking Victims Protection Reauthorization Act ("TVPRA") mandates that the government "promptly" release the immigrant children in its custody to the "least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2). G.G.'s and D.G.'s mother can provide that setting. By retaining custody of G.G. and D.G. and separating them from their mother, who can safely provide for them, Respondents are violating the TVPRA and G.G.'s and D.G.'s Fifth Amendment right to due process.

The TVPRA requires that Respondents act on sponsors' applications quickly—in the case of a parent within at most **10 days**. Despite their mother's suitability, Respondents have unjustifiably kept Petitioners in their custody and away from their family for nearly **three months** to the detriment of Petitioners' mental and emotional health.

Therefore, pursuant to 28 U.S.C. § 2241, G.G. and D.G. respectfully request that they be released into the custody of their mother-sponsor forthwith.

I. Parties

1. Petitioners, G.G. and D.G., are minor immigrant children from Haiti, who entered the United States on or about June 2, 2026, and were unaccompanied by an adult when they voluntarily surrendered to immigration officers. They have been detained by Respondents for nearly **three months**.

2. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security ("DHS"), and as such, has influence over the detention of G.G. and D.G. He is sued in his official capacity.

3. Respondent Robert F. Kennedy Jr. is the Secretary of the Department of Health and Human Services ("HHS"). He has authority over the ORR, a division of the HHS that directly oversees, controls, and manages the detention of unaccompanied immigrant children ("UIC"), including G.G. and D.G. He is sued in his official capacity.

4. Respondent Angie Salazar is the Acting Director of the ORR, and as such, directly oversees, controls, and manages the detention of UIC, including G.G. and D.G. She is sued in her official capacity.

5. Respondent Marvena Twigg is the President of the National Youth Advocate Program – Indiana (NYAP-IN) and the immediate custodian of G.G. and D.G. She is sued in her official capacity.

II. Jurisdiction, Venue, and Exhaustion

6. This court has subject-matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Federal questions in this case arise under the TVPRA, 8 U.S.C. § 1232, and its implementing regulations, 45 C.F.R. § 410.1200-1210, and the APA, 5 U.S.C. § 701 *et seq*.

7. Petitioners have standing to sue based on their detention in institutional custody. *See, e.g., J.E.C.M. v. Lloyd*, 352 F. Supp. 3d 559, 579 (E.D. Va. 2018) (finding standing to challenge ORR policies based on the ongoing invasion of due process rights, including separation from family, that resulted from the policies); *Jacinto-Castamon de Nolasco v. ICE*, 319 F. Supp. 3d 491, 502 (D.D.C. 2018) (finding indefinite separation or families not a compelling government interest therefore giving the plaintiff standing to sue). Thus, they are injured by that requirement. *See FDA v. All. For Hippocratic Med.*, 602 U.S. 367, 384-85 (2024) (finding injury to an individual

through regulation of third-party individuals or businesses when there is "a predictable chain of events leading from the government action to the asserted injury").

8. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., and the All Writs Act, 28 U.S.C. § 1651.

9. Venue is proper in the Northern District of Indiana under 28 U.S.C. § 2241 and § 1391(b)(2) because Petitioners are in Respondents' custody in this district. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973) (venue lies in the judicial district where petitioners are held). Venue is also proper in this district because Respondents are employees, officers, and agencies of the United States, and a substantial part of the events or omissions giving rise to Petitioners' claims occurred in this district. 28 U.S.C. § 2241 and § 1391(e).

10. Exhaustion of administrative remedies is not required. First, under the TVPRA, Congress has not mandated that Petitioners exhaust any administrative remedies. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) (holding unless Congress has mandated exhaustion, it is not required under 28 U.S.C. § 2241). Second, a requirement that Petitioners exhaust an administrative challenge to their detention would be futile. *See Carr v. Saul,* 593 U.S. 83, 93 (2021) (exhaustion of administrative remedies not required if effort is futile); *Honig v. Doe,* 484 U.S. 305, 326-27 (1988) (same). Respondents have not supplied any reason for Petitioners to believe that an administrative challenge will lead to their release to their sponsor who lacks the U.S.-issued identity documents that Respondents are demanding based on a policy that has not been subject to notice and comment. Third, the interests of Petitioners in their immediate release, permitting them

to reunify with their mother, and the delay that further exhaustion would necessitate, outweigh any discretionary judicial interest in exhaustion.

III. Requirements of 28 U.S.C. § 2243

11. The Court must grant a Petition for Writ of Habeas Corpus or issue an order to show cause ("OSC") to Respondents to show cause why the writ should not be granted "forthwith," unless it appears from the application that Petitioners are not entitled to relief. 28 U.S.C. § 2243. If writ or an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* 14. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Ruby v. United States,* 341 F.2d 585, 587 (9th Cir.1965).

IV. Case-Specific Facts

12. G.G. and D.G. crossed the border into the United States on or around June 2, 2026, and were deemed minors unaccompanied by an adult. Since their surrender, Respondents have confined G.G. and D.G. in ORR custody or in the custody of ORR's agents, severely restricting Petitioners' freedom to move and otherwise engage in normal activities for children. Petitioners are currently detained in East Chicago, Indiana, under a contract with National Youth Advocate Program, after being moved from Hannah's House in Los Angeles, California. Petitioners are 17 and 10 years old respectively, and this prolonged and unjustified separation from their family, for nearly three months, has caused a marked deterioration in their mental and emotional well-being. G.G. and D.G. urgently need reunification with their family now.

13. Promptly upon G.G. and D.G.'s arrival at the shelter, their mother completed an FRA to sponsor her children. Their mother has fully complied with the vetting process and completed all required steps, including background checks, fingerprints, proof of income and address, and submission of all application paperwork. Her DNA testing and in-person ID verification are currently being processed. G.G.'s and D.G.'s mother has done everything within her power to secure G.G.'s and D.G.'s release and provide them with a safe, stable home. The sponsor is ready and willing to care for G.G. and D.G. immediately.

14. G.G. and D.G. have suffered emotionally as a result of their prolonged detention. They used to speak to their mother daily before their detention and are desperate to reunite with their family. In addition, G.G. and D.G. have missed a substantial portion of the school year while in custody, further exacerbating the harm caused by their continued separation.

15. Petitioners seek their immediate release from institutional custody. "[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Petitioners only seek release into the custody of their mother. Petitioners are close to their mother, the person "whom our society and this Court's jurisprudence have always presumed to be the preferred and primary custodians of their minor children." *Reno v. Flores*, 507 U.S. 292, 310 (1993).

V. Legal Framework

16. The care and custody of UIC is governed by a legal framework consisting primarily of two statutes, a settlement agreement and federal regulations. The two statutes are the Homeland Security Act of 2002 and the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). The settlement agreement is the 1997 Flores Settlement Agreement, which is binding

on the pertinent federal agencies. The federal regulations consist of the Foundational Rule (defined below), promulgated pursuant to the TVPRA.

A. The Flores Settlement Agreement

17. The Flores Settlement Agreement (defined below) arose from a lawsuit filed by a group of immigrant children challenging their detention and seeking to be released to family members and/or sponsors within the United States. *See Flores v. Sessions*, 862 F.3d 863, 869 (9th Cir. 2017) (discussing the history of the *Flores* litigation); *see also Flores v. Sessions*, Case No. CV 85-4544- DMG (C.D. Cal., July 9, 2018) (affirming the terms of the Flores Settlement Agreement). In 1997, the plaintiff children entered into a consent decree with the federal government that created a nationwide policy governing the custody and release of immigrant children by immigration authorities that applies to this case. *Flores v. Reno*, No. CV 85-4544, Settlement Agreement ("Flores Settlement Agreement").

18. Among other things, the Flores Settlement Agreement requires: (a) release without unnecessary delay, (b) release to an adult caregiver, with parents, legal guardians, and other family members given priority, and (c) placement in the "least restrictive setting" appropriate to the minor's needs. Flores Settlement Agreement, ¶¶ 11, 14.

19. Paragraph 14 of the Flores Settlement Agreement requires in relevant part:

> Where the INS [ORR] determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others, the INS [ORR] shall release a minor from its custody without unnecessary delay, in the following order of preference, to:
>
> a. a parent
> b. a legal guardian
> c. an adult relative (brother, sister, aunt, uncle, or grandparent)
> d. an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in a declaration signed under penalty of perjury before an immigration or consular officer....

See also 8 U.S.C. §§ 1232(c)(2)(A), 1232(c)(3) (codifying the Flores Settlement Agreement).

20. At the time of the Flores Settlement Agreement, a single agency – the Immigration and Naturalization Service ("INS") – administered the custody, detention, and deportation of immigrant children.

B. The Homeland Security Act of 2002

21. The Homeland Security Act of 2002 ("HSA") abolished the INS and transferred the care of UIC, like G.G. and D.G., to ORR. 6 U.S.C. §§ 279(a), (b)(1)(A), (g)(2). Section 462 of the HSA extended the key terms of the Flores Settlement Agreement to all UIC. This was a deliberate choice by Congress to put the care of children in the hands of a non-law enforcement agency like ORR, with a mandate to make decisions in the children's best interests. 6 U.S.C. §§ 279(a), (b)(1)(B); 8 U.S.C. § 1232(c)(2)(A). Congress recognized that a child's welfare should not be in the hands of a law enforcement agency. It tasked ORR with safeguarding the welfare of children, most of whom have been victims of traffickers. *See* 8 U.S.C. § 1232(a)(2)(B).

22. When UIC arrive at the U.S. border or are found in the U.S. without papers, they are placed in the care of ORR. 45 C.F.R. § 410.1101(a). The HSA requires ORR to provide for the children in their custody, organize their care and placement, and protect the children from those who might seek to victimize them. 6 U.S.C. § 279(b)(1)(A) & (b)(2)(A)(ii). In making placement determinations for UICs in their custody, 6 U.S.C. § 279(b)(1)(C), ORR must ensure that these children "are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity." *Id.* § 279(b)(2)(A)(ii).

C. The Trafficking Victims Protection Reauthorization Act of 2008

23. The TVPRA, enacted in 2008, reaffirmed the congressional directive for HHS to "establish policies and programs to ensure that [UIC] in the United States are protected from

traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity." 8 U.S.C. § 1232(c)(1). This law codified a portion of the Flores Settlement Agreement. In recognition of the trauma that the separation from family and isolation in detention centers causes children, the TVPRA directs ORR **to promptly** place these minors "in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A) (emphasis added).

24. In December 2022, the U.S. Senate Committee on Homeland Security and Governmental Affairs published a report identifying concerns with ORR's sponsor vetting process. Minority Staff of S. Comm. on Homeland Sec. and Governmental Affs., 117th Cong., Federal Care of Unaccompanied Children: Minors Remain Vulnerable to Trafficking and Abuse (2022). In particular, the report noted that ORR's completion of background checks had significantly declined despite an increase in the number of UIC entering the United States over the same period. *Id.* at 34.

25. Also in 2024, the HHS Office of Inspector General found widespread failures in ORR's completion of case files and follow-through during the sponsor vetting process. *See generally*, Off. of Inspector Gen., Dep't of Health and Human Servs., OEI-07-21-00250, Gaps in Sponsor Screening and Followup Raise Safety Concerns for Unaccompanied Children (2024) ("OIG Report"). OIG recommended developing additional safeguards. *See* OIG Report at 22.

D. The Federal Regulations

26. In 2024, ORR promulgated the Unaccompanied Children Program Foundational Rule ("Foundational Rule"), formalizing preexisting ORR procedures. 45 C.F.R. pt. 410 (2024). The Foundational Rule recognizes and incorporates the Flores Settlement Agreement, including favoring release of UIC to a suitable sponsor where ORR determines that "detention of the

unaccompanied child is not required either to secure the child's timely appearance before [DHS] or the immigration court, or to ensure the child's safety or that of others." *Id.* § 410.1201(a).

27. Potential sponsors must submit an application and be vetted by ORR to determine their suitability. *Id.* § 410.1202(a). The regulations direct ORR to assess whether a sponsor "is capable of providing for the unaccompanied minor's physical and mental well-being." 45 C.F.R. § 410.1202(b). The suitability assessment must include determining the sponsor's ability to care for the child, verifying the sponsor's identity and relationship to the child, and assessing the suitability of the sponsor's home. *Id.* § 410.1202(b). In addition, ORR "may require such components as ... verification of the employment, income, or other information provided by the potential sponsor as evidence of the ability to support the child, interviews with members of the household, [and] a home visit or home study." *Id.* § 410.1202(c). Potential sponsors and any adult residents in the potential sponsor's home may also be required to submit their fingerprints for background checks. *Id.*

28. "ORR has found that 10 to 20 days is generally sufficient to thoroughly assess sponsor suitability and notes that the additional time may be needed for a home study or other background checks in some cases."[2] 89 Fed. Reg. 34384, 34447. In recognition of this, 45 C.F.R. § 410.1205(b) provides that once the ORR determines that a sponsor is qualified and can provide a setting that is in the best interest of the child, ORR must "release a child from its custody without unnecessary delay." *Id.* at § 410.1201. When the sponsor is a close relative, such as a parent, an unnecessary delay is more than **10 days**. *Id.* at § 410.1205(b).

[2] Pursuant to 45 C.F.R. § 410.1204, a home study is only required where a child is a victim of human trafficking, has a disability that requires particularized services or treatment, certain instances where the child has been a victim of physical or sexual abuse, or where the potential sponsor presents a clear risk of abuse, maltreatment, exploitation, or trafficking. In G.G. and D.G.'s case, a home study was not required. Nonetheless it was conducted successfully.

29. If ORR denies release, it must appoint a "neutral and detached decision maker" to "promptly" notify the potential sponsor. *Id.* § 410.1205(c). The decision must explain the reason for the denial, and (unless safety reasons or the law forbids it) the evidence upon which the denial is based. *Id.* The decision is subject to *de novo* review, with the opportunity for legal representation, at an administrative appellate hearing. *Id.* § 410.1206.

E. Recent Change in ORR Document Policies

30. In March 2025, without following normal rule-making procedures, providing an explanation, or updating relevant agency documents, ORR drastically amended its proof of identification requirements for potential sponsors as set forth in its Policy Guide. Specifically, ORR eliminated certain forms of foreign-issued identification documents, such as passports,[3] birth certificates, and national ID cards, from its list of acceptable identification documents for prospective UIC sponsors.[4]

31. Additionally, ORR began requiring potential sponsors to provide specific documents to establish proof of address and began requiring all sponsors to provide evidence of their relationship with the child (even if they also complete DNA testing). ORR Policy Guide § 2.2.4. ORR further added the requirement that "Federal staff must exhaust all available avenues to verify the authenticity of birth certificates." *Id.* This can cause significant delays for children from countries of origin where there is no functioning consulate in the United States.

[3] ORR only is accepting foreign passports that have a U.S. visa stamp. *See* Office of Refugee Resettlement, ORR Unaccompanied Alien Children Bureau Policy Guide: Section 2, https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2 (last accessed Apr. 2, 2026).

[4] Office of Refugee Resettlement, ORR Unaccompanied Alien Children Bureau Policy Guide: Section 2, https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2 (last accessed Apr. 2, 2026).

32. On March 17, 2025, ORR began requiring DNA testing of all children and potential sponsors who claim to be biologically related to the child they are applying to sponsor.[5] In practice, sponsors and children have reported having to wait weeks or even months for a DNA appointment.[6]

33. On April 15, 2025, ORR once again, without following normal rule-making procedures, providing an explanation, or updating relevant agency documents, amended the Policy Guide by implementing new proof of income requirements. While before, potential sponsors could employ a variety of methods to demonstrate their financial ability to support a UIC, the amended guide now requires potential sponsors to submit either (1) the previous year's tax return; (2) paystubs from the last 60 days; or (3) a letter from the sponsor's employer verifying salary and employment.[7]

34. On May 28, 2025, ORR removed the sponsor application packet from public access, which was previously on their website. After this point, a potential sponsor can only receive the application directly from ORR, which has caused additional delay.

35. On July 9, 2025, ORR began requiring potential sponsors to attend in-person appointments with ORR personnel to verify identification documents, sometimes with Immigration and Customs Enforcement ("ICE") present. This is not formally set out in ORR policies but ORR's internal email states that "federal law enforcement agencies 'may be present to meet their own mission objectives, which include interviewing sponsors.'" https://www.cnn.com/2025/08/08/politics/exclusive-federal-

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[5] ORR Field Guidance #27, https://acf.gov/sites/default/files/documents/orr/FG-27_-_DNA_Testing_Expansion.pdf.

[6] The Unraveling of ORR: A Quick and Calculated Undoing of a System Intended to Protect Children, National Center for Youth Law (2025), https://youthlaw.org/wp-content/uploads/ncyl_the-unraveling-of-_orr_sept2025_final.pdf.

[7] Office of Refugee Resettlement, ORR Unaccompanied Alien Children Bureau Policy Guide: Section 2, https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2.2.4 (last accessed Apr. 2, 2026).

law-enforcement-to-begin-interviewing-unaccompanied-migrant-children-in-government-custody.

36. Taken together, these new requirements ("ORR New Document Policies") represent an insurmountable obstacle for sponsors and a bar to minor reunification with qualified sponsors. The ORR New Document Policies conflict with existing federal regulations, which provide that an alien, including a sponsor of a UIC, may prove identity with a foreign-issued form of identification. *See* 45 C.F.R. § 410.1202(b).

37. ORR's own child welfare experts have long stated that best practice is to release UIC to their families within 30 days of admission. *See, e.g.*, Exhibit 21 Part 2, *J.E.C.M. v. Hayes*, 18-cv-903 (E.D. Va. Sept. 16, 2019), ECF No. 242-13. In fiscal years 2021 through 2024, the average length of time a child remained in ORR custody ranged from 27 to 33 days. U.S. Dep't of Health and Human Servs., Office of Refugee Resettlement, Unaccompanied Alien Children Average Monthly Data: Average Length of Care, https://acf.gov/orr/about/ucs/facts-anddata, last updated August 18, 2025. In 2025, the average length of time a child remained in ORR custody was 117 days or 4 months. See https://acf.gov/orr/about/ucs/facts-anddata.

38. Though this number is alarmingly high when compared to fiscal years 2021 through 2024, it is deceiving as it includes the months prior to the implementation of the ORR New Document Policies. Since the implementation of the ORR New Document Policies, the average length of time a child remained in ORR custody spiraled to 112 in March 2025, 217 in April 2025, 191 days in May 2025, 154 days in June 2025, 171 days in July 2025, and 182 days in August 2025.[8]

F. Restrictions Upon UIC in ORR Custody

[8] *See* Petition filed in *K.A.P.L. vs. Angie Salazar, et als*, 26cv2477, Dkt. No. 1, p. 12, United States District Court for the District Illinois, Eastern Division.

39. Children in ORR detention have their freedoms significantly restricted. Children in ORR custody waiting to be released to a sponsor do not attend local schools. Instead, children are typically provided with "educational hours" in the detention center itself.

40. Children in ORR custody are not able to freely have phone calls or visits with their family members, including their parents, as many are held in districts located far away from where their parents or family members live.

41. Children in ORR custody are granted only 1-hour per day of "large muscle activity" and 1-hour per day of "structured leisure time activities" which are increased to three hours on non-school days. ORR Rule 3.3.

42. "Research has shown that separation from a caregiver or parent for even a short period of time can be traumatic for a child."[9] "Children often suffer from 'detention fatigue', particularly during long stays in ORR custody, with symptoms of increased stress, anxiety, behavior issues, and self-harm or suicidal ideation."[10] "Children in [longer stays] may experience psychological distress, stemming from a sense of helplessness, limited agency, and lack of trauma-informed care."[11]

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[9] Punishing Trauma, Incident Reporting and Immigrant Children in Government Custody, Young Center for Immigrant Children's Rights and National Immigrant Justice Center (September 2022) https://www.theyoungcenter.org/wp-content/uploads/2025/03/20220921FINALSIRREPORT-HYPERLINKED-1.pdf citing S.A. MacLean et al., "Characterization of the mental health of immigrant children separated from their mothers at the U.S.–Mexico border," Psychiatry Research, April 2020, https://pubmed.ncbi.nlm.nih.gov/31522891/.

[10] *Id.* citing Acting Inspector General Joanne M. Chiedi, HHS Off. of the Inspector General, Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody, Sept. 2019, 12, https://oig.hhs.gov/oei/reports/oei-09-18-00431.pdf.

[11] *Id.* (citing Exhibit C: Declaration of Ryan Matlow: Psychological Evaluation of Children and Conditions at Fort Bliss Emergency Intake Site 2, *Flores v. Garland*, No. 85-cv-04544-DMG-AGR, ECF No. 1161-7 (C.D. Cal. Aug. 9, 2021) (describing "clinically significant psychological harm" suffered by children in prolonged detention in Fort Bliss)).

43. Children in ORR custody "are restricted in their autonomy and agency, they have little knowledge or control over requirements or processes for release, they feel helpless in their circumstances …"[12] and "quite universally want to be released to family … and are being held against their will in restrictive settings" in which even the "least restrictive" setting in ORR custody still feels quite restrictive to children. *Id.*

44. Mental health clinicians document that a child's mental health often deteriorates as the length of stay in ORR custody increases. *Id.* at p. 12. Research and reports tell us that "children's experiences in immigration custody are associated with increases in psychological distress and functional impairment" including "increases in depression, anxiety, traumatic stress symptoms, and behavioral difficulties – sometimes leading to thoughts, urges, and acts of self-harm and suicidality – associated with children's experiences of immigration detention." *Id.* at p. 16.

45. After nearly **three months** in the shelter, G.G. and D.G. have suffered detention fatigue. They speak with their mother regularly, expressing their desperation to be reunited with their family.

G. Prolonged Detention of Immigrant Children

46. Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (internal quotation marks omitted). In the immigration context, the Supreme Court has

[12] The Unraveling of ORR: A Quick and Calculated Undoing of a System Intended to Protect Children, National Center for Youth Law (2025), 17, https://youthlaw.org/wp-content/uploads/ncyl_the-unraveling-of-orr_sept2025_final.pdf.

recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore v. Kim*, 538 U.S. 510, 528 (2003).

47. In *Demore* the Court emphasized that, for detention under the statute to be reasonable, it must be for a brief period of time. *See, e.g.,* 538 U.S. at 528 (detention permissible because, as compared to *Zadvydas,* "the detention here is of a much shorter duration"). Justice Kennedy explained in his concurrence that "[w]ere there to be an unreasonable delay by the INS in pursuing and completing deportation proceedings, it could become necessary then to inquire whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Id.* at 532–33 (Kennedy, J., concurring).

48. Following *Zadvydas* and *Demore*, federal courts have found either the immigration statutes or due process require a hearing for adult noncitizens subject to unreasonably prolonged detention pending removal proceedings. *See, e.g., Black v. Decker*, 103 F.4th 133, 147-58 (2d Cir. 2024); *Hernandez-Lara v. Lyons*, 10 F. 4th 19, 28-35 (1st Cir. 2021).

49. While the standard for prolonged detention for adults appears to be generally six months (180 days), the Flores Settlement Agreement, TVPRA, and the Foundational Rule all establish that the detention of immigrant children requires greater care and more restrictions upon the government than that of adult detention such as taking into account their best interest. In this regard, the TVPRA regulations mandate that UIC be released promptly to the least restrictive setting that is in their best interest. In the case of a close relative such as a mother, promptly is no more than two weeks.

50. G.G. and D.G. have now been detained for nearly three months.

H. The Impact of the ORR New Document Policies

51. The inevitable result of the new policies is that sponsors who are undocumented in the U.S., and have only foreign-issued identification documents, cannot satisfy the new policies, despite being otherwise qualified to sponsor family members. Since March of 2025, Respondents have applied the ORR New Document Policies to sponsors as "regulated parties," resulting in the continued separation of children from their families and their continued and lengthy institutional detention. Even more egregious, ORR also requires that every member of a potential sponsor's household also comply with the ORR New Document Policies.

52. Respondents have stated publicly that some unnamed countries are difficult to contact and some sponsors have used fraudulent foreign documents. The stated reasons are pretextual: the government continues to accept and require foreign-issued identity documents in a vast number of immigration-related contexts. For example, if the sponsors applied for temporary protected status, non-immigrant visas, permanent residency, asylum, or individual taxpayer identification numbers, the government would expect and accept the foreign-issued documents it rejects in the UIC sponsorship context.

53. In truth and in fact, the ORR New Document Policies seek to transform ORR from a program to foster child welfare into an immigration enforcement program that fosters the removal of undocumented sponsors and UIC.

54. The ORR New Document Policies are keeping UIC detained and are unlawful. Under the TVPRA, ORR's function is to act in the best interest of the child; not to prioritize immigration enforcement. The TVPRA also directs ORR to place children in the least restrictive setting that is in the best interest of the child. The ORR New Document Policies prevent ORR from complying with its congressional mandate.

55. The new ORR policies have resulted in longer detentions for minors and less reunifications with relative-sponsors – precisely the opposite of the intent of the TVPRA. Between October 2025 and February 2026, the length of the detention for the over 2300 minors in ORR custody increased from 166 to 195 days.[13] ORR releases almost none of the children in its custody. Significantly, only about **5% or 119 of the 2348 minors** in detention in February 2026 were released to sponsors; **2,229** remained detained.[14] In March 2026 only 228 or about 10% of the 2173 minors in detention were released to sponsors; **1,945 remained in custody.** *Id.* The average number of days in ORR custody for UIC released to sponsors in March 2026 was six and a half months. *Id.* UIC who remain in ORR custody have been detained an average of seven months. *Id.* ORR is blatantly violating its mandate.

56. The current administration has made no secret of its wish to deport as many undocumented persons as possible, including UIC, without due process. The ORR New Document Policies are just one more tactic to achieve this goal. In practice, under the ORR New Document Policies, UIC are removed from their communities, isolated from their families, placed in facilities unequipped to ensure their welfare and effectively coerced into waiving their rights. Immigration Enforcement Agents are brought into sponsor interviews to intimidate potential sponsors and coerce them into desisting in their applications. These goals are plainly unlawful and a blatant violation of the TVPRA, which requires ORR to act in the best interest of the child; not to engage in immigration enforcement. Even the appearance of coordination between ORR and immigration-enforcement personnel intimidates undocumented but qualified sponsors into not sponsoring loved

[13] *See* Office of Refugee Resettlement, Data, available at https://acf.gov/orr/about/ucs/facts-and-data#book_content_1 (last accessed March 19, 2026).

[14] *See* Office of Refugee Resettlement, Data, available at https://acf.gov/orr/about/ucs/facts-and-data#book_content_9 (last accessed March 19, 2026).

ones, contrary to the TVPRA's stated and sole goal of ensuring the children's best interest and welfare.

VI. Claims for Relief

COUNT I

Violation of the Trafficking Victims Protection Reauthorization Act
8 U.S.C. § 1232
(Custody must be in the "least restrictive setting" in the "child's best interest")

57. Petitioners incorporate paragraphs 1 to 56 by reference as if they were stated and set forth herein.

58. The TVPRA requires that Respondents place Petitioners in the least restrictive setting that is in their "best interest." 8 U.S.C. § 1232(c)(2)(A). This is presumptively with "a suitable family member," who can provide for their physical and mental well-being. *Id.* ORR regulations affirm "that, generally, placement with a vetted and approved family member or other vetted and approved sponsor, as opposed to placement in an ORR care provider facility, whenever feasible, is in the best interests of unaccompanied children." 89 Fed. Reg. at 34440.

59. Based on her identification documents, fingerprints, and background checks, Petitioners' mother is who she purports to be, and she can provide the least restrictive setting that is in Petitioners' best interest. Therefore, according to TVPRA regulations, custody of Petitioners must be transferred to their mother. 45 C.F.R. § 410.1201.

60. Respondents are maintaining Petitioners in their custody, which is not the least restrictive setting that is the "best interest," of G.G. and D.G., in violation of Petitioners' rights under the TVPRA.

61. Petitioners are thus entitled to release under 28 U.S.C. § 2241.

COUNT II

Violation of the Trafficking Victims Protection Reauthorization Act
8 U.S.C. § 1232
(Release must occur "promptly" and "without unnecessary delay")

62. Petitioners incorporate paragraphs 1 to 56 by reference as if they were stated and set forth herein.

63. Under the TVPRA, the government must release immigrant children in its custody "promptly." 8 U.S.C. § 1232(c)(2). "Prompt" means "[d]one quickly, immediately, or at the right time; performed without delay" Black's Law Dictionary (12th ed. 2024).

64. Likewise, under TVPRA regulations, Respondents must release the immigrant children "without unnecessary delay," 45 C.F.R. §§ 410.1200, 1201.

65. These commands are strict: "without unnecessary delay" means that ORR shall ordinarily adjudicate a sponsorship application within 10 days for a close relative, 14 days otherwise. *Id.* § 410.1205(b). ORR may deny a sponsorship only if it determines that the sponsor cannot provide for the "well-being" of the child or that placement with the sponsor would endanger the child or the community. *Id.* § 410.1205(a).

66. These regulations obligate ORR to release Petitioners to their mother unless Respondents have notified the mother of a decision that relies upon evidence subject to appellate challenge supporting a valid reason not to release. *Id.* §§ 410.1205-1206. Respondents have not done so.

67. By taking over 10 days to release Petitioners to their mother, and by not supplying a valid, evidence-based decision for denying release, Respondents are violating Petitioners' rights under the TVPRA.

68. Under 28 U.S.C. § 2241, Petitioners are entitled to release.

COUNT III

Violation of the Fifth Amendment
(Deprivation of Liberty Without Due Process—Family Separation)

69. Petitioners incorporate paragraphs 1 to 56 by reference as if they were stated and set forth herein.

70. The Fifth Amendment of the United States Constitution guarantees that no person shall "be deprived of life, liberty, or property, without due process of law."

71. The substantive component of the Due Process Clause protects liberty against "certain government actions regardless of the fairness of the procedures used to implement them." *Daniels v. Williams*, 474 U.S. 327, 331 (1986). The government may not infringe upon fundamental liberty interests unless the infringement is narrowly tailored to serve a compelling state interest. *United States v. Salerno*, 481 U.S. 739, 749 (1987).

72. At the apex of this substantive protection is the right of children to live with their close family members. *See Moore v. City of E. Cleveland*, 431 U.S. 494, 500 (1977) (recognizing a fundamental right "concerning family living arrangements"). Familial association is "perhaps the oldest of the fundamental liberty interests" protected by the substantive component of due process. *Troxel v. Granville,* 530 U.S. 57, 65 (2000); *see also Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (holding that close family member have a constitutional right to live together without government interference); *Smith v. Org. of Foster Families for Equality & Reform*, 431 U.S. 816, 845 (1977) ("the liberty interest in family privacy has its source, and its contours are ordinarily to be sought…in intrinsic human rights."); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) ("[t]he history and culture of Western civilization" establishes the "strong tradition" of protecting families and allowing parents a primary role over "the nurture and upbringing of their children"; it is "an enduring American tradition"); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) ("[i]t is cardinal

... that the custody, care and nurture of the child reside first in the parents"); *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) ("[t]he child is not the mere creature of the State").

73. Government action seeking to break the familial bond "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder v. Mass.*, 291 U.S. 97, 105 (1934). Whether the focus is on the child or the adult family member, the interest of both in familial association is fundamental: "the child and [her] parents share a vital interest in preventing erroneous termination of their natural relationship." *Santosky v. Kramer*, 455 U.S. 745, 760 (1982). "[S]o long as a parent adequately cares for his or her children (i.e. is fit), there will normally be no reason for the State to inject itself into the private realm of the family...." *Id.* at 68.

74. Respondents' refusal to grant custody of G.G. and D.G. to their mother violates Substantive Due Process as guaranteed to them by the Fifth Amendment of the United States Constitution. Therefore, G.G. and D.G. are entitled to release under 28 U.S.C. § 2241.

COUNT IV

Violation of the Fifth Amendment
(Deprivation of Liberty Without Due Process—Indefinite Detention)

75. Petitioners incorporate paragraphs 1 to 56 and 69 to 74 by reference as if they were stated and set forth herein.

76. "[T]he interest in being free from physical detention" by the state is "the most elemental of liberty interests[.]" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). A child's interest in being free from confinement is no narrower than that of an adult. *In re Gault*, 387 U.S. 1, 13 (1967) ("neither the Fourteenth Amendment nor the Bill of Rights is for adults alone"); *see also Reno v. Flores*, 507 U.S. 292, 316 (1993) (O'Connor, J. and Souter, J., concurring), quoting *Gault*, 387 U.S. at 13 ("[The Supreme Court] ha[s] consistently [...] rejected the assertion that a child,

unlike an adult, has a right 'not to liberty but to custody'"). Further, "incarceration is rarely if ever a necessary condition for raising the living standards of those capable of surviving safely in freedom, on their own or with the help of family or friends." *O'Connor v. Donaldson*, 422 U.S. 563, 575 (1975). Thus, as a matter of substantive due process, Petitioners have a liberty interest in freedom from *institutional* custody, even though minors are "always in some form of custody." *Schall v. Martin*, 467 U.S. 253, 265 (1984); see *Lucas R. v. Becerra*, No. 18-5741, 2022 WL 2177454, at *14 (C.D. Cal. Mar. 11, 2022) (finding that ORR policies for placing minors in more restrictive facilities violated due process because minors have liberty interest in freedom from institutional custody).

77. Petitioners' interest in freedom from institutional custody is particularly pronounced as their detention lengthens. The Supreme Court has warned that institutional detention of adults for six months or longer may deprive them of the liberty interest protected by due process unless the government supplies a detainee-specific justification. *Zadyvydas v. Davis,* 533 U.S. 678 (2001).

78. Petitioners are children who have been detained for nearly three months. To a child, three months may appear even longer than for adults. Therefore, the substantive presumption from *Zadyvydas* applies at least as strongly to G.G. and D.G. Here, the government has not provided any detainee-specific justification for prolonging Petitioners' detention.

79. Courts have found that family separation and prolonged detention harm children. *See, e.g., Jacinto-Castanon de Nolasco*, 319 F. Supp. 3d at 502 (determining that family "[s]eparation irreparably harms plaintiffs every minute it persists"); *Andreiu v. Ashcroft,* 253 F.3d 477, 484 (9th Cir. 2001) (*en banc*). In view of this finding, ORR is obligated under the TVPRA to determine the suitability of a close family member for sponsorship "without unnecessary delay,"

that is within 14 days. 45 C.F.R. § 410.1201. Failure to do so violates the TVPRA regulations and G.G. and D.G.'s right to be free from unjustified detention.

80. Respondents have not identified a permissible justification specific to Petitioners, such as flight risk or dangerousness that justifies their continued detention. *Zadyvydas, supra.* ORR's ongoing and prolonged detention of Petitioners bears no reasonable relation to any government purpose. Petitioners have not committed any crime and are not a danger to themselves or others. Petitioners' sponsor has demonstrated herself as a capable and willing sponsor to care for Petitioners, according to the requirements of law. Moreover, G.G.'s and D.G.'s sponsor is in fact capable, proper, and fit, and Petitioners present no flight risk.

81. Respondents continued detention of Petitioners under these circumstances violates their due process rights under the Fifth Amendment, entitling them to release under 28 U.S.C. § 2241.

COUNT V

Violation of the Fifth Amendment
(Deprivation of Liberty Without Due Process—Procedural Fairness)

82. Petitioners incorporate paragraphs 1 to 56, 69 to 74 and 75 to 81 by reference as if they were stated and set forth herein.

83. The right to due process also contains a procedural component that constrains the process by which the government may deprive a person of a legally protected liberty interest. *See Matthews v. Eldridge,* 424 U.S. 319, 332 (1976). 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). Due process also requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

84. The fairness of any government decision-making process involves a familiar balancing test: (1) assessing the private interests, that is, Petitioner's interest in family unity and freedom from institutional detention; (2) the risk of an erroneous deprivation of that interest without added procedural safeguards; and (3) the government's countervailing interest. *See Matthews v. Eldridge,* 424 U.S. at 335.

85. Based on the balancing of these three factors, Petitioners should be released.

86. First, as established, Petitioners' interest in their liberty is profound and clear. It is based on their constitutional right to familial association and freedom from institutional detention. It is also rooted in the TVPRA's assignment of nondiscretionary duties to Respondents. Respondents must release Petitioners from institutional custody unless "a suitable family member is not available to provide care." 8 U.S.C. § 1232(c)(2)(A). They must also "promptly place[]" each child **in the least restrictive setting** that is in the child's the "best interest." *Id.* (emphasis added). When, as here, constitutional and statutory dictates contain "specified substantive predicates" eliminating agency discretion, the beneficiaries—like Petitioners—have a protected liberty interest. *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 463 (1989).

87. Second, the risk of an erroneous deprivation of that constitutionally protected interest—the disqualification of an otherwise suitable sponsor—is high. Petitioners' mother's identity, biological relationship to Petitioners, and ability to provide them with safe and appropriate care have all been verified and are not genuinely in dispute.

88. Finally, the government's interest in retaining custody of Petitioners at this point is low. By law, ORR's duty is *not* in enforcing immigration policy against others. Its only duty is to safeguard the well-being of Petitioners. The government has and can continue to comply with its duty through the verification of identification documents, background checks, fingerprint checks

and DNA testing. In addition, it can verify a sponsor's ability to care for a UIC without requiring tax returns, paystubs or employer's employment letters. Thus, the government's interest in Petitioners' well-being requires their release from institutional detention and reunification with their mother.

89. Respondents' detention thus violates Petitioners' rights to due process under the Fifth Amendment. They are entitled to release under 28 U.S.C. § 2241.

Requests For Relief

Petitioner respectfully urges that this court:

1. Assume jurisdiction over this matter;

2. Declare that Petitioners' current detention is unlawful;

3. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioners from custody to the custody of their sponsor forthwith;

4. Issue an Order prohibiting Respondents from transferring Petitioners from the district without the court's approval;

5. Prohibit Respondents from requiring U.S. issued identification documents from G.G.'s and D.G.'s sponsor;

6. Award Petitioners their attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

7. Grant any further relief this court deems just and proper.

Respectfully submitted,

/s/ Jess Hunter-Bowman
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