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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

I.J.S., a minor,

Petitioner,

v.

Angie Salazar, Acting Director of the Office of Refugee Resettlement; et al.,

Respondents.

Case No. 5:26-cv-05404-AJR

PETITIONER'S TRAVERSE IN SUPPORT OF VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

The Honorable A. Joel Richlin
United States Magistrate Judge

[Declaration of Marion Donovan-Kaloust filed concurrently herewith]

I. INTRODUCTION

This case concerns an unaccompanied child ("UC")—a victim of sexual abuse—who has been in Office of Refugee Resettlement's ("ORR") custody for nearly six months (176 days). This is despite Congress's direction that she be "promptly placed in the least restrictive setting that is in the best interest of the child," 8 U.S.C. § 1232(c)(2)(A), and her mother's diligent efforts for sponsorship and release. Respondents' principal basis for her continued detention is that ORR's prolonged reunification process, which has advanced only minimally since April, is not yet complete. They further argue that this case is not properly before this Court, Petitioner's claims are unavailable, and that M.E.S.N., Petitioner's mother has been dilatory in the sponsorship process (a process they claim she has "sole" control over). As discussed more below, these contentions find no support in the law or the underlying factual record. The TVPRA, ORR's Foundational Rule, and the Fifth Amendment do not permit detention to continue indefinitely simply because additional agency action remains outstanding. Further, where, as here, Petitioner has disclosed past sexual abuse while in custody, Respondents' delay in conducting a home study, one core component of the vetting process which they fail to address in any of their submissions, contravenes the law.

Petitioner does not challenge ORR's authority to vet potential sponsors. Rather she questions whether that authority permits ORR to continue her detention under its current practices. Congress's mandate of prompt placement, reinforced by ORR's own regulations, contemplates sponsor adjudications measured in days and supervisory review within ninety days, not detention for nearly six months, as here. Respondents do not contend that Petitioner is dangerous, a flight risk, or otherwise requires continued detention. Nor do they contend that Petitioner's mother, M.E.S.N., who seeks to be her sponsor, poses any risk to the Petitioner. In view of this, the record evidence, the Petition, and the below discussion, the Petition should be granted.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Petition for Writ of Habeas Corpus ("Petition;" "Pet."), Dkt. No. 1, the Declaration of Erica Santamaria ("Santamaria Decl."), Dkt. No. 1-1 are incorporated by reference. The following summary reflects largely undisputed facts drawn from those filings and Respondents' declaration.

I.J.S., who entered custody when she was 14 years old, was placed in ORR custody on April 5, 2026. Pet. ¶¶ 1, 4, 23; Declaration of Tony Bismas (Dkt. 6-1, "Biswas Decl.") at ¶¶ 31, 32. She sought reunification with her mother, M.E.S.N., a Category 1 sponsor residing in Washington with whom ORR records document a close relationship. Pet. at ¶¶ 24, 25.

M.E.S.N., despite a limited ability to read and well-documented and longstanding technology problems (*e.g.*, Biswas Decl. at ¶¶ 44, 74), has been cooperative, diligent, transparent, and resourceful in her efforts to reunite with her daughter. *See, e.g.*, Pet. at ¶¶ 4, 5, 6, 26, 27, 28, 63; *see also* Biswas Decl. at ¶¶ 49, 72 (examples of M.E.S.N.'s reaffirmance that she wants to be with her daughter). As highlighted in the Biswas Declaration, just three days after her daughter was placed in ORR custody, M.E.S.N. began working to meet the sponsorship requirements, providing Respondents with a copy of the front of her proof of identity document. Biswas Decl. at ¶ 38. When this did not satisfy the government, M.E.S.N., on April 16, 2026, informed ORR that she had made an appointment with the Mexican consulate to obtain further identification. *Id.* at ¶ 41. The consulate denied her request at an April 21, 2026, appointment. *Id.* at ¶¶ 44, 45. The day after her unsuccessful visit to the consulate, M.E.S.N. notified ORR (as the record shows she frequently did). *Id.* at ¶ 45; *see also, e.g.*, ¶¶ 44, 45, 47, 50, 52, 53, 58, 59, 62, 64, 65. 66, 68, 72, 74 (examples of M.E.S.N.'s reporting to ORR from April through September). She then, on May 6, 2026, told ORR that she would again try to obtain documentation to prove her identity from the consulate. *Id.* at ¶ 49. On May 12, 2026, more than one month after she began the sponsorship process, and on her third attempt to satisfy ORR's proof of identify requirements, M.E.S.N. reported that she

had received her Mexican passport from the consulate. *Id.* at ¶ 50.

M.E.S.N.'s diligence is also shown in her efforts to meet other sponsorship requirements. To meet the proof of income requirements, she approached a former employer, who she afterwards reported to ORR could not help, and then went to a bank only to learn she had brought the correct documents. *Id.* at ¶ 68. When ORR's vetting procedures of household members were uncomfortable to one housemate with a pending immigration matter, M.E.S.N. decided to move. A note from the ORR records, which just precedes M.E.S.N.'s decision to move to a new residence, and was omitted from the Answer and the Biswas Declaration, explains that on June 16, 2026: "[Case manager] spoke to [sponsor household member] who reported she is hesitant to complete the [fingerprint] process due to having an open case with immigration."[1] Where M.E.S.N. had a similar problem with finding an alternate caregiver who would submit to Respondents' background check, SSN/ITIN, and identification, she continued to seek one. *See id.* at ¶¶ 56, 59, 61, 72, 79. M.E.S.N. now lives on her own. *Id.* at ¶ 72.

While her decision to live alone after much housing instability might have obviated the need for household member vetting where they contend with their own immigration uncertainty, the decision led to new setbacks for M.E.S.N. For example, the Washington state identification she spent July working to obtain could no longer serve as a proof of address. *See id.* (stating that as of September 16, 2026, M.E.S.N. still, among many other things, had not submitted a proof of address); *see also id.* at ¶ 62 (stating that on July 27, 2026, "the Washington State ID document would serve as the sponsor's proof of address."). Additionally, in September, ORR advised that she now needed to "revise the ARI due to change of address." *Id.* at ¶ 74. A revised ARI remains on ORR's list of outstanding items. *Id.* at ¶ 75.

Despite their claims of diligence in assisting M.E.S.N. with the sponsorship process—"using phone calls, text messages, and letters" to communicate (*id.* at ¶

[1] This is not reflected in the Biswas declaration, which states only that on June 23, 2026, "household members declined to participate in the fingerprint-based background checks." Biswas Decl. at ¶ 57.

77)— M.E.S.N.'s application for reunification with her daughter remains in the early stages with many key vetting stages incomplete (*i.e.* the home study, background checks, DNA testing) and timing for completion uncertain. *Id.* at ¶ 75. This is in part due to ORR's use of M.E.S.N.'s phone as the main mode of communication with M.E.S.N.—making calls and sending texts to communicate. Since the start of her sponsorship process, M.E.S.N. has repeatedly reported that her phone (and technology in general) is unreliable and unfamiliar. *E.g.*, *id.* at ¶ 44 (M.E.S.N. confirms on April 16, 2026, her "phone was not working well;" ¶ 45 (M.E.S.N. reports on April 22, 2026, the need to use a friend's phone and that she could not access her application); ¶ 74 (M.E.S.N. reports on September 23, 2026 that she is "unfamiliar with technology" and "unable to access her application"); Pet. at ¶ 5 (technological issues prohibited M.E.S.N. from learning updates on her application for weeks.)"[2] Communication through text messages and in letters was ineffective for the additional reasons that:

(1) M.E.S.N. does not speak English, and the government has not stated in any of its papers that an interpreter was provided or that letters and texts were sent in her native language;

(2) M.E.S.N. has "limited reading ability" (Biswas Decl. at ¶ 74)[3] and therefore cannot proficiently read texts and letters in any language; and

(3) as stated above, M.E.S.N. has moved multiple times in an effort to meet vetting requirements and therefore lacks a fixed address at which to receive

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[2] In its Answer, the government accuses M.E.S.N. of "falsely alleging that she had not heard application updates for weeks," but this statement is not false and is reflected in the ORR records. Answer at 14:21-22. ORR records show that on May 12, 2026, M.E.S.N. had an interaction with DSA FFS SC about her passport, as it had "been obtained." Then, on May 26, 2026, M.E.S.N. called to inform her case manager than she "continues to not get a response from DSA FFS Saul," and relayed that she had not hear from him since May 12, 2026. Indeed, on May 26, M.E.S.N. contacted DSA FFS Saul because two weeks had passed since she had heard an update.

[3] This limited reading ability has also likely affected M.E.S.N.'s ability to understand bank procedures when unsuccessfully attempted to open a bank account.

Respondents' letters (even if she could read and the letters were written in a language she could understand). *Id.* at ¶¶ 58, 72, 78 (referencing M.E.S.N.'s multiple moves).[4]

At present, and after nearly six months, virtually all tasks remain pending in M.E.S.N.'s sponsorship vetting process. These include:

1. Revisions to the Sponsor Application.
2. Revisions to the sponsor's ARI.
3. Proof of Address.
4. Proof of Income.
5. Proof of application for an ITIN.
6. Internet-based background checks for the sponsor.
7. Completed ARI for the ACG.
8. Background checks for the ACG, including:
    - fingerprint-based checks, and
    - internet-based checks.
9. Completion of a Home Study.
10. DNA testing[5].

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[4] Despite these setbacks, and showing her diligence and desire to be with her daughter, M.E.S.N. has still tried to overcome her technological problems, the government's penchant for communicating via text, and her limited reading ability by seeking help from others. The individual whom she found, however, was only able to assist her on the weekends. *Id.* at ¶ 74.

[5] Petitioner notes that DNA testing is not required by statute or regulation. *See* 45 C.F.R. Part 410. ORR added expanded DNA-testing requirements only through policy guidance in March 2025. *See* ORR Field Guidance #27, *DNA Testing Expansion* (Mar. 14, 2025). While ORR always had the ability to request DNA when there was any doubt regarding a family relationship, it previously did not require DNA across the board, even in cases where, as here, there was absolutely no question regarding the veracity of the family relationship. Declaration of Marion Donovan-Kaloust ("Donovan-Kaloust Decl.") at ¶¶ 8. Courts in this District have found DNA testing unnecessary to release, *id.* at ¶ 10-11, and ORR ultimately declined to incorporate a DNA-testing requirement into the Foundational Rule. *See Unaccompanied Children Program Foundational Rule*, 89 Fed. Reg. 34384 (Apr. 30, 2024). In addition, there is no dispute that M.E.S.N. is Petitioner's mother. Respondents repeatedly state as much in their Answer and the Biswas Declaration where they affirm that they have a copy of Petitioner's birth certificate which further proves the mother/daughter relationship. *E.g.*, Answer at (cont'd)

11. In-person ID verification.

12. Division of Vetting (DoV) report. Biswas Decl. at ¶¶ 75-76.

Critically, the home study remains uncompleted. As set forth in the Petition, where, as here, Petitioner disclosed on July 28, 2026, that [redacted], Respondents were required to carry out a home study under the TVPRA and ORR policy. *See* Pet. at ¶¶ 7, 30, 41, 75. But, this has not occurred and Respondents fail to address the basis for this failure or any efforts to accomplish this task in either their Answer or the Biswas Declaration over the last couple of months.

Meanwhile, I.J.S.'s emotional and physical health is worsening daily. Petitioner is experiencing chronic sadness, worry, fear, and depression, which began when she was placed in custody and has intensified. She is withdrawn and at times refuses to eat. Beginning as early as April 23, 2026, she expressed a desire to leave detention as soon as possible. I.J.S. reported that she experiences sadness and guilt approximately 2-3 times per week and worries daily. She is increasingly withdrawn; she often has her head down and has no desire to speak. I.J.S. experiences daily stomachaches requiring physician care and medication. She experienced bilateral rib cage pain, which necessitated a trip to urgent care. She wakes up feeling shaky three to four times a week due to the intensity with which she misses her family. Her sleep is disrupted by flashbacks to the trauma she disclosed. She has reported feeling pressure in her chest and throat and a sensation that she cannot breathe. Pet. at ¶¶ 30, 31, 63, 76. ORR has been medicating the now 15-year-old Petitioner to manage her emotions and pain.

III. LEGAL STANDARD

Respondent's Answer includes a description of the policies and procedures

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14:2-4 (blaming "Petitioner's [m]other" for the uncomplete sponsorship process); Biswas Decl. at ¶ 64 (stating that M.E.S.N. had provided her birth certificate and that of I.J.S.) Just scheduling a DNA test, a task that remains to be done in this case, has in some instances taken as long as four months. Once scheduled and testing is completed, additional delays can occur. For example, DNA samples have been lost by ORR or additional samples may be requested. Donovan-Kaloust at ¶ 9.

ORR must follow when placing UCs with sponsors under the ORR Unaccompanied Alien Children Bureau Policy Guide (the "Policy Guide"). *See* Answer at 6:18-7:18, 7: 7-10; 10: 3-11:18; 25 at n. 3; 27 at n. 5. Petitioner clarifies and supplements those procedures here.

a. Release Timing Requirements

Notably absent from Respondents' Answer are the timing requirements established by regulation that govern UC release. ORR must effectuate release to a vetted sponsor – with preference for parents first – "without unnecessary delay," and begin sponsor assessment as soon as a child enters ORR custody. 45 C.F.R. §§ 410.1200–1201; Policy Guide §§ 2.1, 2.2. To ensure UCs are released "in a safe, efficient, manner without unnecessary delay," ORR has mandated timeframes to adjudicate a completed Family Reunification Packet ("FRP"). Absent complicating factors, ORR must adjudicate completed FRPs within 10 calendar days for parent sponsors and 14 calendar days for close relatives. 45 C.F.R § 410.1205(b). ORR is further required to periodically review pending FRPs –specifically, a *formal review every 90 days* for applications that remain pending – to ensure the reunification process does not stall. 45 C.F.R § 410.1207(a). This review is not cursory; ORR supervisory staff must timely resolve the reasons that a release application remains pending and determine possible steps to accelerate the child's safe release. *Id.* ORR must further update both potential sponsor and child, explain why the process is incomplete, and work with potential sponsors, relevant stakeholders, and ORR to address unresolved portions of the FRP.

b. Alternative Caregiver or Plan for Release

ORR policy requires concurrent release planning alongside the Family Reunification Packet ("FRP"). ORR's *Unaccompanied Child Manual of Procedures*, Section 2: *Safe and Timely Release from ORR Care* ("UC MAP § 2"), directs ORR personnel to identify and vet an alternate adult caregiver alongside the primary sponsor to ensure that a contingency caregiving plan exists if the sponsor becomes unable to care for the child. *See* UC MAP § 2, at 29–30, 55–57. Sponsors

must also provide information verifying the identity of adult household members and any adult caregivers identified in the sponsor care plan. *Id.* at 29.

ORR's *concurrent-planning* procedures require identification of an alternate potential sponsor *or other release option* (emphasis added) when concerns arise during the assessment process or when the sponsor is unable to complete the assessment process in a timely manner. *See* UC MAP § 2, at 7, 9. If concurrent planning is undertaken, ORR personnel should document the reason for concurrent planning, any concerns regarding the potential sponsor, and any available information concerning additional sponsors or *alternate release plans*. *Id.* at 45

IV. ARGUMENT

a. Petitioner's Continued Detention is Subject to Judicial Review

Respondents' argument, that habeas relief is untimely because the sponsorship process remains ongoing and M.E.S.N.'s sponsorship application remains incomplete, rests on an improper premise and is therefore without grounds. *See, e.g.*, Answer at 15:14-15. This is because Petitioner does not challenge sponsor adjudications; she challenges her continued detention while reunification remains unresolved and with no end in sight. Indeed, as set forth in detail above, *See supra* Part II, I.J.S. has been in ORR custody for nearly six months and M.E.S.N.'s application for reunification with her daughter remains in the very early stages. Habeas relief exists precisely to test the legality of the custody at issue. *See* 28 U.S.C. § 2241(c)(3). As set forth in the Petition, Petitioner's claims properly sound in habeas, as "challenges to the statutory framework authorizing detention, questions of law raised in the application or interpretation of statutes, and constitutional claims, such as claims that the discretionary process itself was constitutionally flawed," have been found to "fit comfortably" within the scope of the habeas statute. *Alam v. Keeton*, CV-19-05538-PHX-MTL (CDB), 2020 WL 5439513, at *4 (D. Ariz. 2020) (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018); *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011))

(internal quotation marks omitted).

Respondents' further argument, which relies on out-of-circuit precedent from the Seventh Circuit Court of Appeals and the wrong legal standard from that jurisdiction, that administrative exhaustion, which they contend has not happened, is "appropriate" also fails. Answer at 15:14-16:27. Exhaustion here is prudential, not statutory. *See Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004); *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). And prudential exhaustion is not required if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, [or] irreparable injury will result." *Laing*, 370 F.3d at 1000; *see also Hernandez*, 872 F.3d at 988. Those circumstances are present here. Petitioner remains detained while ORR's reunification process continues without resolution, and the procedures identified by Respondents provide no timely mechanism through which to obtain review of this detention. Moreover, this Court and other district courts in this Circuit have routinely declined to require administrative exhaustion. *See generally IRLM v. Salazar et al*, 2026 WL 2597933 (C.D. Cal. Sept. 2, 2026) (granting petition of unaccompanied minor in prolonged custody without requiring administrative exhaustion); *see also Vasquez Lopez v. Hernandez*, 830 F.Supp.3d 1097, 1102 (W.D. Wash., 2026) (no administrative exhaustion required where it would prolong ICE detention); *Quintanilla v. Hernandez*, 2026 WL 1827541, at *4 (W.D. Wash., 2026) (same).

Respondents' exhaustion argument ultimately describes the injury rather than answering it. Under Respondents' theory, judicial review would become available only after ORR completes the very process whose delay Petitioner is challenging. Petitioner is not challenging completed sponsorship determinations. She challenges ongoing detention during a reunification process that, by Respondents' own account, remains unresolved for nearly six months after Petitioner entered ORR custody. Habeas relief exists precisely to test the legality of such custody. *See* 28 U.S.C. § 2241(c)(3).

b. ORR's Vetting of Sponsors Does Not Authorize Prolonged Detention

Respondents contend that because sponsor vetting remains ongoing, their custody of Petitioner is "required by statute." Answer at 19:8-22:25. Petitioner does not dispute that ORR possesses statutory authority to evaluate sponsor suitability. *See* 8 U.S.C. § 1232(c)(3)(A); 45 C.F.R. § 410.1202. Instead, Petitioner questions whether ORR may continue to detain this child while twelve tasks, including, but not limited to, a home study, DNA testing, and background checks remain uncompleted and uninitiated. Biswas Decl. at ¶ 75. Respondents identify no statute, regulation, or case authorizing detention of that duration based solely on an unfinished reunification process. Nor do Respondents identify any determination that I.J.S. poses a danger to the community or presents a flight risk, or that M.E.S.N. presents any risk of abuse, maltreatment, exploitation, or trafficking to Petitioner. *See generally* Answer and Biswas Decl.

Respondents' Answer and accompanying declaration repeatedly portray M.E.S.N. as the cause of her daughter's prolonged detention. They cast M.E.S.N. as "unwilling" to participate in their procedures, unresponsive, "sole[ly]'" responsible for her application's completion, and an individual who has made "false" accusations. *E.g.*, Biswas Decl. at ¶¶ 77-80 (paragraph supporting a section entitled "Summary of the Causes of Delays in Processing I.J.S.'s case" which relate only to M.E.S.N.); Answer at 14:2-13 ("The Sponsor Application Process is Not Complete Because Petitioner's Mother Has Failed…"; *id.* at 14:12-13 (completion of the application is within "the sole control of M.E.S.N., not ORR."); *id.* at 14:16-17 (contending that M.E.S.N. is "unable or unwilling to reliably respond to ORR's efforts to contact her via phone calls, text messages, and letters…"; *id.* at 14:20-22 (accusing M.E.S.N. of "false[]" allegations); *id.* at 15:4-5 (stating that it is not ORR's responsibility to "fix or work around" M.E.S.N.'s failures to communicate); *id.* at 16:11-14 ("there are no allegations that ORR is preventing the potential sponsor …from completing outstanding sponsorship requirements; in fact the record shows

the opposite."; *id.* at 20:12-14 (the sponsorship process "could easily be completed with minimal effort by M.E.S.N.").

But, the government's own papers expose the falsity of their contentions. Indeed, as discussed in detail above, M.E.S.N. has been diligent in her efforts to meet the extensive vetting requirements. *See supra* at § II, 2:11–3:24. And, Respondents' alleged "diligence" is not as they claim given that M.E.S.N. has had longstanding technological issues and has limited reading ability, of which they are aware, making it challenging to receive ORR's phone calls, letters, and texts. *See supra* at Id.

Furthermore, Respondents' contention that ORR has no control over the process is groundless. ORR initiates the background checks (which it has not), DNA, testing (same), and as mentioned in the Petition and *supra*, the home study, which they have not carried forward despite the legal requirement that they must following Petitioner's July 28, 2026, disclosure [redacted] *See also supra* at Id. (discussing the home study); Pet. at ¶ 41 (discussing the home study requirements, which Respondents do not address in their papers).

The authority Respondents invoke is authority to maintain temporary custody while sponsor suitability is assessed and reunification is pursued. The detention described in Respondents' own chronology bears little resemblance to the temporary and transitional custody contemplated by the TVPRA and ORR's own regulations.

Congress directed that unaccompanied children be "promptly placed in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). ORR's regulations similarly require prompt and continuous efforts toward release, release without unnecessary delay, and periodic supervisory review of reunification applications that remain pending. *See* 45 C.F.R. §§ 410.1200, 410.1201, 410.1203(a), 410.1207(a). ORR is specifically required to "make and record prompt and continuous efforts toward the release of children in its custody." 45 C.F.R. § 410.1203(a). These provisions reflect a central premise of the statutory scheme: ORR custody is temporary. Sponsor review exists to facilitate safe

reunification, not to transform temporary child-welfare custody into confinement measured in many months.[6]

Respondents' contention that they are "acting in accordance with the TVPRA's requirements," Answer at 20:19-22, is without grounds as they have ignored other regulations that exist for the sole purpose of moving along the reunification process. These regulations contemplate formal supervisory review every ninety days, identification of barriers to release, and affirmative efforts to resolve those barriers. *See* 45 C.F.R. § 410.1207(a). They have also disregarded, and indeed not addressed in any way, the TVPRA mandate that a home study be conducted to move along the sponsorship process after, as here, an UC has [redacted]. Pet. at ¶ 76. I.J.S. has remained in ORR custody through multiple ninety-day review cycles while reunification remained unresolved. Respondents identify no final release determination. *See generally* Biswas Decl. The record provides little indication that the review process contemplated by § 410.1207(a) resulted in timely resolution of the barriers that Respondents identify as preventing reunification. Additionally, ORR's own policies provide for concurrent planning and the identification of alternative caregivers when sponsorship assessments cannot be completed in a timely manner. *See* UC MAP § 2, at 7, 9, 45. Yet Respondents identify no concurrent-planning efforts for I.J.S. notwithstanding the prolonged delays in her case.

If ORR may continue detaining children and delaying their release by simply identifying more unresolved administrative steps, the statutory requirement of prompt placement would have no practical meaning.[7] The consequences of these

[6] Since the beginning of 2025, ORR has imposed numerous additional sponsor-vetting requirements. *See* Answer at 7:19-8:24; *see also* Donovan-Kaloust Decl. at ¶¶ 7-8. Those changes have been accompanied by a dramatic increase in the average length of stay for unaccompanied children in ORR custody, from approximately 30 days in 2024 to 117 days in 2025. Pet. at 2, FN 2.

[7] As our colleagues from the ACLU of Virginia recently put it in a similar Habeas Petition also involving UCs detained for more than 300 days: "Respondents' delays [in timely adjudicating a FRP] created a self-fulfilling trap. As months (cont'd)

delays are not abstract. Petitioner's anxiety, distress, worsening mental-health symptoms, physical health ailments, and prolonged separation from family while reunification remained unresolved is well documented in ORR records.[8] *See* Pet. ¶¶ 30, 31, 63, 76. Congress's command of prompt placement reflects the recognition that prolonged institutional custody itself carries significant costs for children awaiting reunification with family members.[9] At some point, detention ceases to resemble the temporary child-welfare custody authorized by Congress and instead becomes the consequence of an administrative process that has failed to reach a timely conclusion.

After nearly six months of confinement, Respondents have failed to establish that Petitioner's continued detention remains reasonably related to the temporary child-welfare purposes underlying ORR custody. This reality is especially

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passed, previously completed background checks expired and had to be repeated, generating new rounds of delay. This is despite the absence of any identified trafficking concern, criminal concern, or danger to the children. These delays in reunification are part of an escalating pattern by Respondents to prevent children from being released." *See* https://www.acluva.org/cases/jane-p-et-al-v-salazar-et-al/?document=ECF-1-Petition-for-Writ-of-Habeas-Corpus-and-Complaint ¶4.

[8] Respondents suggest that Petitioner believes that *IRLM* contains language "holding that alleged emotion harm ("continued separation") constitutes an exception to the statutorily mandated evaluation of sponsors…" Answer at 21:23-24. This misrepresents what Petitioner stated. *See* Pet. at ¶ 14 (stating: "In *I.R.L.M. v. Salazar et al.*, 2026 WL 2597933, at *9 (C.D.Cal., 2026), this Court agreed that continued separation between a petitioner and his mother "ignores TVPRA's mandate that the child be placed promptly into the least restrictive setting that is in the best interest of the child, and also ignores the extreme hardship and emotional harm being inflicted on Petitioner…".

[9] Those costs are well documented. HHS's Office of Inspector General reported that ORR mental-health clinicians observed that children's mental health often deteriorates as their length of stay in ORR custody increases. *See* U.S. Dep't of Health & Hum. Servs., Off. of Inspector Gen., *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody*, OEI-09-18-00431, at 12 (Sept. 4, 2019). Courts have likewise recognized the serious psychological consequences associated with prolonged family separation and detention affecting children. *See Ms. L. v. ICE*, 310 F. Supp. 3d 1133, 1146 (S.D. Cal. 2018).

pronounced where Petitioner's mother is willing and able to care for her daughter whose mental and physical health has worsened to a point where ORR is regularly medicating the child, she is making trips to urgent care for acute pain, she has completely withdrawn, she is experiencing flashbacks to her trauma, and is, on occasion, refusing to eat. Petitioner is bearing the consequences of delay in a reunification process that Congress expected ORR to promptly complete. The TVPRA and Foundational Rule require ORR to act with diligence, not to rely on its incompleteness as a continuing justification for confinement. Nothing in either authority permits prolonged detention simply because ORR continues to identify additional steps before making a reunification decision.

c. Petitioner's Detention Violates Due Process

i. Petitioner's Continued Detention Violates Procedural Due Process

Procedural due process requires adequate procedural protections to ensure that the government's asserted justification for detention outweighs an individual's constitutionally protected interest in avoiding physical restraint. *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017). Under *Mathews v. Eldridge*, courts consider: (1) the private interests affected; (2) the risk of erroneous deprivation under the procedures used and the value of additional safeguards; and (3) the government's interest. 424 U.S. 319, 335 (1976). Each factor favors Petitioner.

ii. Petitioner Is Deprived of Fundamental Liberty Interests

Freedom from physical restraint lies at the core of the liberty protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Children likewise possess a constitutionally protected interest in freedom from institutional confinement. *Reno v. Flores*, 507 U.S. 292, 302-03 (1993). Petitioner has spent nearly six months in ORR custody while separated from her mother who seeks reunification. *See* Biswas Decl. at ¶ 31. The Constitution also protects family integrity and familial association. *Rosenbaum v. Washoe County*, 663 F.3d 1071,

1079 (9th Cir. 2011); *Moore v. City of East Cleveland*, 431 U.S. 494, 504-05 (1977). For a child, confinement means more than physical restraint; it means continued separation from her mother during a critical period of emotional, social and personal development, and the loss of a portion of childhood that no later reunification can restore. Thus, Petitioner's continued confinement implicates substantial liberty interests.

iii. The Risk of Erroneous Deprivation Is Substantial

The second *Mathews* factor likewise strongly favors Petitioner. Respondents repeatedly rely on ORR's administrative review process and the procedures approved in *Lucas R.* as evidence that adequate procedural protections exist. *See* Answer at 26:14-28:8. But those procedures largely become meaningful only after ORR reaches and communicates a reunification determination. Petitioner's challenge arises from the absence of such a determination despite months of continued detention.

Petitioner challenges prolonged detention during unresolved reunification proceedings. Until ORR reaches a final decision, he remains confined while the very basis for his continued detention goes unresolved. In effect, Petitioner remains trapped in procedural limbo. The procedures identified by Respondents may protect against erroneous sponsor determinations; they do not protect against prolonged detention while no determination is made.

Respondents' reliance on *Lucas R.* is misplaced. Respondents invoke *Lucas R.* as evidence that ORR's reunification framework satisfies due process. But *Lucas R.* assumed the existence of a reunification determination subject to administrative review. See *Lucas R. v. Becerra*, No. CV 18-5741-DMG (PLAx), 2022 WL 2177454, at *28 (C.D. Cal. Mar. 11, 2022)6.[10] It did not address whether children

[10] *Lucas R.* did not merely recognize ORR's authority to vet sponsors. It also required periodic supervisory review of pending reunification applications to identify barriers to release and advance safe reunification. *See Lucas R. v. Becerra*, No. CV 18-5741-DMG (PLAx), 2022 WL 2177454, at *28-29 (C.D. Cal. Mar. 11, 2022). Those reviews were intended to prevent children from remaining in ORR (cont'd)

may remain detained for months while that determination remains unresolved.

The risk of erroneous deprivation is not hypothetical. I.J.S. remains detained approximately nearly six months while ORR has stalled any review of M.E.S.N.'s application. Biswas Decl. at ¶ 31. In light of the delays documented in the record and the time it takes to complete the 12 remaining tasks, including DNA verification and a home study (to which they have not attended since [redacted] disclosure), *See supra* at § II, 5:3-8, Respondents have provided no assurance that Petitioner will be released from ORR custody any time soon. Consequently, Petitioner does not have a meaningful mechanism through which to obtain timely review of the detention she challenges here.

Procedural due process requires an opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews*, 424 U.S. at 333. Where continued detention depends on ORR's reunification determination, procedures that become available only after that determination is made provide little protection against the deprivation Petitioner challenges here. The second *Mathews* factor therefore strongly favors Petitioner.

d. Respondents' Interests Do Not Justify Prolonged Delay

Respondents unquestionably possess a legitimate interest in protecting children from trafficking, abuse, neglect, and exploitation. 8 U.S.C. § 1232(c)(3)(A); 6 U.S.C. § 279(b)(2)(A)(ii). Petitioner does not dispute that interest. But the government has a substantial interest in careful sponsor review, not in delay itself. Respondents repeatedly claim that M.E.S.N. has caused process delays by failing to provide documentation despite ORR being "extremely diligent." *E.g.*, Answer at 14:22-15:3. They further claim, callously, that M.E.S.N. is "unable or unwilling to reliably respond to ORR's efforts to contact her via phone calls, text messages, and

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custody while reunification efforts stagnated. *Id.* The Biswas Declaration does not indicate whether such ninety-day reviews occurred, what steps were identified to advance reunification, or whether those efforts resulted in meaningful progress toward release. *See generally* Biswas Decl. Petitioner had been in ORR custody well beyond 90 days and reunification remains unresolved.

letters. But, as discussed above, the record belies this contention. As set forth *supra*, M.E.S.N.'s diligence is well-documented. *See supra* at § II, 3:2-24. Among other things, she has made multiple attempts to secure housing, bank records, household members and an ACG willing to submit to ORR's procedures and vetting, identification, and employment verification requirements. And, as discussed above, it is not that she is "unable or unwilling" to be reliable, it is instead that she has had multiple documented technological issues, has needed to move residences multiple times to meet ORR's requirements, and cannot access or reliably read the letters and texts that have been sent because it is not clear to which address the letters were sent, her phone does not work well, and, as ORR disclosed, M.E.S.N. has limited reading ability. And, even where M.E.S.N. was able to meet certain requirements, such as a proof of address when she obtained her Washington state identification, this progress was eroded when she was forced to move to a new residence in an effort to try to comply with other requirements, namely the household member requirements, which her previous housing situation would not support because of household members' fear of their own immigration proceedings being placed in jeopardy. Her challenges are not, as the government contends, a lack of will. *E.g.,* Answer at 14:16-18. Nor are the vetting requirements required for her to once again be with her daughter "easily completed with minimal effort by M.E.S.N." *Id.* at 20: 12-14. Indeed, her efforts thus far show that it has not been easy for M.E.S.N. Nor is M.E.S.N.'s "ability and/or willingness" to complete the sponsorship application "within [her] sole control…, not ORR's." *Id.* at 14:11-13. As discussed *supra*, ORR has control over initiated and completion of many of the vetting requirements. They further have control over the way in which they communicate with M.E.S.N. who cannot read or access their communications reliably.

The TVPRA reflects Congress's judgment that children's interests are ordinarily served through prompt placement in family-based settings once appropriate vetting has occurred. *See* 8 U.S.C. § 1232(c)(2)(A). Nor would additional safeguards impose a substantial burden. Petitioner does not seek to

eliminate sponsor vetting. She seeks timely adjudication of reunification requests and meaningful review of prolonged detention. Requiring ORR to follow the procedures and timelines reflected in its own regulations would impose little burden while substantially reducing the risk of erroneous deprivation. See 45 C.F.R. §§ 410.1205, 410.1207. Balancing all three *Mathews* factors, Petitioner's continued detention violates procedural due process.

e. Respondents Violated Petitioner's Substantive Due Process Rights

Substantive due process protects against arbitrary governmental interference with fundamental liberty interests, including family integrity, the parent-child relationship, and freedom from unnecessary physical restraint. *Reno v. Flores*, 507 U.S. 292, 302 (1993); *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Ms. L. v. ICE*, 310 F. Supp. 3d 1133, 1142 (S.D. Cal. 2018). Respondents argue that ORR's conduct remains constitutional because reunification proceedings continue. Answer at 23:1-24:21. They contend—despite the record showing ORR's repeated determination that Petitioner's mother presents no risk of abuse, maltreatment, exploitation, or trafficking (Pet. at ¶ 61)—that M.E.S.N. has neither an absolute nor unqualified constitutional liberty interest in raising her daughter and that ORR has a countervailing interest in protecting I.J.S. from the risk of harm upon his release. Answer at 23:15-19. Respondents further contend that ORR has put in place "ample due process procedures in its regulations and policy" related to potential sponsors who are parents to contest ORR's release decisions. *Id.* at 23:23-24. Finally, they argue that the process in which they have engaged with M.E.S.N. does not "shock[] the conscience," as it is not outside traditional norms. *Id.* at 24:16-17. These arguments are without grounds.

The existence of ongoing administrative activity does not, by itself, establish that continued detention remains reasonably related to ORR's stated objectives. The issue is not whether ORR may investigate sponsor suitability. It is whether Petitioner's continued confinement remains reasonably related to the temporary child-welfare purposes that justify ORR custody in the first instance. The vetting

process for M.E.S.N. began just after her daughter entered ORR custody on April 5, 2025. And, despite all of M.E.S.N.'s efforts, nothing, apart from fingerprinting, which came back clear, has been completed. Biswas Decl. ¶ 75 (outstanding items). This includes the home study which was required under the TVPRA after the disclosure two months ago by Petitioner that [redacted] It further includes the request for DNA, which can take months to complete, where, as discussed above, there is no dispute that M.E.S.N. is I.J.S.'s mother. And, the lack of initiation of a number of other tasks, such as background checks on M.E.S.N., which could have been done previously.

The Constitution permits reasonable investigation into sponsor suitability. It does not permit prolonged separation from available family members while the process used to justify that separation remains indefinitely unresolved. See *Ms. L.*, 310 F. Supp. 3d at 1142-46; *E.H.C.F. v. Kennedy*, No. 3:25-cv-2142, 2026 WL 145229, at *10 (D. Conn. Jan. 16, 2026). At some point, prolonged detention resulting from an unresolved administrative process ceases to be a means of assessing sponsor suitability and becomes an end in itself. Under these circumstances, Respondents have failed to show that Petitioner's continued detention remains reasonably related to ORR's stated objectives. Continued confinement based on an unresolved reunification process, without a determination that M.E.S.N. is unsuitable and without any identified endpoint, is arbitrary in relation to the temporary child-welfare purposes underlying ORR custody and therefore violates substantive due process. Contrary to what Respondents contend, the lengthy vetting process that has kept Petitioner, who is fragile and deteriorating daily, in ORR custody and away from her mother, a parent with whom this child has a documented strong relationship, for nearly five and a half months with no end in sight due to additional procedural hurdles does "shock the conscience." *See supra* at § II, 6:9-21 (discussing emotional harm). Further shocking is Respondents' disregard for their legal duty to carry out a home study, and their lack of progress on this vetting task, when their own records state that Petitioner disclosed her sexual trauma

on July 28, 2026, while in custody. *See supra* at § II, 6:3-8.

f. Petitioner's TVPRA Claim is Properly Before this Court

Respondents argue that because the "TVPRA is the wrong statute to seek relief under…" and that instead Petitioner must bring his challenge under the APA. Answer at 3:1-10; *id.* at 17:1-7. This is incorrect. Respondents' APA argument suffers from the same flaw as their administrative exhaustion one, *see supra* § IV.a. Respondents contend that judicial review is unavailable because ORR has not yet issued a final reunification or release decision. *Id.* at 17:25-19:7. But again, Petitioner does not seek review of a completed agency adjudication. She challenges ongoing detention while reunification remains unresolved. Under Respondents' theory, ORR could continue detaining children while simultaneously avoiding judicial review simply by leaving reunification proceedings unfinished. Neither the APA nor habeas principles permit such a result, particularly because the APA does *not* bar habeas review of ongoing unlawful detention. Petitioner remains detained while ORR's reunification process continues without resolution, and the procedures identified by Respondents provide no timely mechanism through which to obtain review of this detention.

V. CONCLUSION

For the foregoing reasons, this Court should grant the relief sought in Petitioner's Petition or hold an evidentiary hearing. This Court should order Petitioner immediately released from ORR detention to her mother.

Respectfully submitted on September 28, 2026.

/s/ Cynthia Isabel Felix
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