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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

C.S.M., a minor, By and Through M.P.S.M., as Next Friend of Minor,

Petitioner,

v.

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

Respondents.

Case No. 5:26-CV-01144

Hon. John W. Holcomb

PETITIONERS' REPLY TO *EX PARTE* MOTION FOR TEMPORARY RESTRAINING ORDER

[Supplemental Declarations of Stephanie Periban Palacios and M.P.S.M. filed concurrently herewith]

INTRODUCTION

Petitioner C.S.M. is a 14-year-old unaccompanied minor forced to grieve the death of her mother alone in ORR custody because Respondents refuse to release her to her sister. Respondents have held C.S.M. in custody for **196 days**, despite having a fully engaged sister prepared to assume her custody and care. During this time, C.S.M. has remained separated from her only available family member, alone in grieving her mother's recent death, and without any of the findings that would justify her continued detention. The record establishes that C.S.M. is suffering from ongoing emotional harm and a lack of meaningful procedural protection. Respondents are holding C.S.M. in violation of the TVPRA and the Due Process Clause.

Respondents' opposition confirms judicial intervention is necessary here. They offer no evidence, no required findings, and no legal authority supporting continued detention of C.S.M. Respondents offer conclusory assertions, mischaracterizations, and the speculation that they "may" issue a decision on her release next week. They do not dispute the absence of danger or flight risk findings; they do not justify missing every relevant deadline; and they do not identify any public interest advanced by keeping this child in custody. In short, Respondents fail to rebut a single TRO factor. Therefore, Petitioner requests immediate injunctive relief.

FACTUAL BACKGROUND

The facts alleged in Petitioner's *Ex Parte* Motion for Temporary Restraining

Order ("TRO") are incorporated by reference here. ECF No. 2. The following summarizes and briefly supplements those facts:

Petitioner C.S.M. is a 14-year-old child who arrived in the United States on September 2, 2025. ECF No. 2 at 2:12. Since C.S.M.'s arrival to the U.S., M.P.S.M., as C.S.M.'s biological sister, indicated she was willing and able to sponsor C.S.M and assume her custody and care. *Id.* at 2:19; *see* Declaration of M.P.S.M. ("Decl. Of M.P.S.M.") at ¶¶ 1-5. ORR started the sponsorship process by collecting M.P.S.M.'s name, fingerprints, proof of income, and information on household members, amongst other information required by ORR in the sponsor vetting process. *Id.* at 2:22. M.P.S.M. completed her ORR reunification application on November 6, 2025. *See* Decl. Of M.P.S.M. at ¶ 5.

Since November 2025, the only requirement pending for reunification to be approved is a DNA test. *Id.* at ¶¶ 5-8. On December 23, 2025, counsel sent a demand letter to the ORR Acting Director asking that C.S.M. be released to her sister given ORR's failure to schedule the required DNA test in a timely manner. *See* Supplemental Declaration of Stephanie Periban Palacios ("Suppl. Periban Decl.") at ¶4. There was no response. *Id.*

On March 1, 2026, C.S.M. and M.P.S.M.'s mother passed away. Decl. Of M.P.S.M. at ¶ 8. On March 5, 2026, counsel for Petitioner contacted Respondents' agent, to again request that C.S.M. and M.P.S.M. be scheduled for a DNA appointment. Suppl. Periban Decl. at ¶¶ 8-10. On March 11, 2026, Petitioner filed this action, including the instant TRO. ECF Nos. 1-2. Only after the filing of this

suit, ORR finally scheduled M.P.S.M.'s DNA appointment, on March 12, 2026. Decl. of M.P.S.M. at ¶ 12; Suppl. Periban Decl. at ¶ 11. M.P.S.M. completed her DNA test on March 13, 2026. *See* Decl. of M.P.S.M. at ¶ 14; Suppl. Periban Decl. ¶ 12. C.S.M. completed her DNA test on March 16, 2026. *Id. C*.S.M. remains in ORR custody. Suppl. Periban Decl. ¶ 19.

ARGUMENT

I. RESPONDENTS FAIL TO REBUT C.S.M.'S LIKELY SUCCESS ON THE MERITS

Petitioner argues she is likely to succeed on the merits on two independent bases—first, that her ongoing detention violates the TVPRA's mandate of prompt placement in the least restrictive setting; and second, that Respondents' conduct violates her constitutional right to due process of law. ECF No. 2 at 4:23-15:12. Respondents' opposition fails to rebut either showing. *See generally* ECF No. 10.

A. Respondents Are Unlawfully Holding C.S.M. In Their Custody

Petitioner's TRO set forth that C.S.M. is likely to succeed on her statutory claim because the TVPRA imposes a *mandatory duty* on ORR to promptly place unaccompanied children in the least restrictive setting that is in the child's best interest. ECF No. 2 at 5:14-18. The time Respondents have to place C.S.M. with a suitable sponsor is not limitless. Indeed, the Foundational Rule and ORR policies require adjudication of a complete "Category 2"[1] sponsor application **within 14**

[1] A "Category 2" sponsor is a close family relative sponsor other than a parent, such as a sister or aunt. Suppl. Periban Decl., 4:11-16.

days. *Id.* at 9:8-9. Respondents have failed for months to carry out that obligation. The regulations and ORR policy do not permit prolonged detention while ORR undertakes open-ended processing or delays essential steps.

Respondents' opposition fails to meaningfully engage with this mandated legal framework. First, Respondents' claim that they "acted promptly" at intake is contradicted by their own chronology. Although ORR identified M.P.S.M. as a potential sponsor and took some action in early September and October of 2025, it then took no meaningful action for months. ECF No. 2 at 3:11-26. M.P.S.M. On September 19, 2025, M.P.S.M.'s familial relationship with Petitioner was confirmed and noted by ORR (ECF No. 2 at 3:1-2), and all members of her household cleared fingerprinting requirements by October 31, 2025 (ECF No. 10 at 9:13-18). ORR noted the need for DNA testing as early as October 13, 2025 (ECF No. 2 at 3:6-7) but failed to schedule a single appointment for 125 days despite weekly follow-ups and a December 23, 2025, written demand from counsel. *Id.* at 3:21-22; Suppl. Periban Decl. at ¶4. This is not "prompt placement" under the TVPRA. ORR's sudden activity—collecting DNA samples on March 13 and 16, 2026, *after* litigation commenced (ECF No. 10 at 10:8-11; *See* Decl. of M.P.S.M. at ¶ 14; Suppl. Periban Decl. ¶ 12.)—confirms that progress occurred only because this TRO was filed, not because ORR complied with statutory duties.

Second, Respondents' assurance that they "may" issue a decision next week does not defeat likely success on the merits—it proves it. The TVPRA violations have already occurred, and ORR has missed every statutory and regulatory deadline.

See generally ECF No. 2. The Foundational Rule requires adjudication of completed relative sponsor applications within 14 days (*id.* at 9:8-9), and ORR must conduct 90-day supervisory reviews to prevent cases from stalling (*id.* at 9:24-26, 10:1-8). ORR did neither. Respondents identify *no* danger, safety, or flight risk finding that could theoretically delay release—because none exists. *See generally* ECF Nos. 10, 10-1. A speculative assurance of future action cannot retroactively remedy months of unlawful inaction.

Third, Respondents' attempt to claim that M.P.S.M. "initially identified herself as C.S.M.'s maternal aunt" is both inaccurate and irrelevant. ECF No. 10 at 8:22-23; Decl. of M.P.S.M. at ¶¶1-4; Suppl. Periban Decl. ¶¶ 13-16. It is inaccurate because M.P.S.M. never represented herself as C.S.M.'s aunt; any such designation was Respondents' own error. *Id.* But, even taking Respondents' version at face value, the distinction is meaningless: both an aunt and a sister fall within the same sponsor classification (Category 2A), as stated in Respondents' opposition. ECF No. 10 at 7:4-6. The TVPRA and its implementing regulations impose the same evidentiary and safety screening requirements, regardless of whether the sponsor is an aunt or a sister. *Id.* Respondents' mislabeling C.S.M.'s sponsor—between two identically processed categories—cannot justify delay. Respondents' attempt to elevate a non-distinction into a justification for delay only highlights the weakness of their position.

Finally, Respondents' vague references to ongoing "delays" in the vetting process obscure that the delay here is entirely of ORR's own making. ORR had all

necessary information by early November 2025 or sooner: sponsor identity, relationship documentation, household fingerprints, and a fully engaged sponsor eager to reunite with C.S.M. ECF No. 2 at 1:14-20, 3:6-7; Decl. of M.P.S.M. at ¶ 5. Yet, ORR failed to schedule DNA testing for over four months (ECF No. 2 at 3:6-19), failed to conduct required 90-day reviews (*id.* at 9:24-10:10), failed to communicate updates (ECF No. 10-1 at 9:20-24), and failed to issue a decision of any kind. The TVPRA does not allow ORR to create delay through inaction and then use that delay to justify continued detention.

For these reasons, Respondents have not—and cannot—rebut Petitioners' showing of a strong likelihood of success under the TVPRA. The statute's requirements are mandatory, the facts are undisputed, and ORR's prolonged nonaction constitutes unlawful detention under federal law.

B. Respondents Are Violating C.S.M.'s Due Process Rights

Petitioner is also likely to succeed on her due process claim because ORR has confined her for over six months without any danger or flight risk finding and without adhering to its own required reunification procedures (ECF No. 2 at 7–9; ECF No. 10 at 11:6-16). Under the *Mathews* test, these procedural failures compel injunctive relief. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

1. RESPONDENTS ARE VIOLATING C.S.M.'S MOST PROFOUND INTERESTS

The private interests at stake are foundational—C.S.M.'s freedom from confinement, her ability to reunify with her sister, and her need for stability and

emotional support following the recent death of her mother (ECF No. 2 at 4:1-7; 11:13-12:26). Unable to contest such undeniably important interests, Respondents try to downplay them.

First, Respondents quibble that being in custody is not inherently "detention" and that "not being in a single preferred sponsor applicant's custody is not 'detention.'" ECF No. 10 at 11:19-27. Respondents' attempted distinction is pointless. C.S.M. is physically confined in an ORR-run facility where she cannot voluntarily leave, cannot choose her placement, and cannot be reunited with her family. This is detention in the constitutional sense, regardless of what Respondents call it. *Id.* The Supreme Court has long held that due process protects against *any* form of government imposed physical restraint like the ORR custody here. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (freedom from government custody lies at the core of the Due Process Clause); *Guillermo M.R. v. Kaiser*, 2025 WL 1983677, at 4 (N.D. Cal. July 17, 2025) (civil immigration custody triggers due process protections); *R.D.T.M. v. Wofford*, 2025 WL 2617255, at 4 (E.D. Cal. Sept. 9, 2025) (unaccompanied minors possess a protected liberty interest in freedom from ORR confinement).

Second, Respondents claim that C.S.M. "not being within [her] sister's custody" is not "inherently an intolerable deprivation of [C.S.M.'s] liberty interest" misstates the standard. ECF No. 10 at 11:28-12:3. The relevant question is not whether Respondents deem continued detention "tolerable," but whether the separation constitutes a deprivation of liberty without adequate process. It does.

C.S.M.'s liberty interests include freedom from institutional confinement and the right to familial association, especially with the only close relative available to care for her after her mother's recent death. ECF No. 2 at 11:13-14:2.

Third, Respondents argue that the "status quo was not the government's decision" ECF No. 10 at 12:5-6. Respondents are factually wrong. Whatever C.S.M.'s circumstances upon entry were, her *continued separation* from her sister is the direct result of ORR's choices: the failure to schedule DNA testing for 125 days (ECF No. 2 at 10:10), failure to perform required 90-day reviews (ECF No. 2 at 10:6-8), and failure to adjudicate a straightforward Category 2A sponsorship application despite having all needed information for months (ECF No. 2 at 7:14-19). Respondents alone control C.S.M.'s release. Their attempt to disclaim responsibility for the conditions they themselves perpetuated is untenable.

The first *Mathews* factor weighs decisively for Petitioner.

2. RESPONDENTS CONCEDE A HIGH RISK OF ERRONEOUS DEPRIVATION UNDER THE PROCEDURES USED HERE

Respondents admit the risk of erroneous deprivation of C.S.M.'s right under their current procedures is very high. ECF No. 10 at 12:19-24 (citing *G.M.M. et al v. Jessica Beltran et al.*, 5:26-cv-00085-SVW-PVC). As Respondents' opposition states, "it is also noteworthy that in another recent habeas petition filed in this District, involving minor petitioners from multiple families making similar claims against ORR, ***almost all of the many petitioners*** were ***thereafter*** released to sponsors, on a relatively prompt timeframe." *Id.* This showcases a concerning trend—ORR is failing to process many RFPs

and only releasing UCs to their families in response to litigation. ORR has already corrected its erroneous deprivation of the same liberty interests from similarly situated petitioners, bringing the same claim against the same agency as C.S.M. This alone weighs the second *Mathews* factor in Petitioners' favor.

The high risk of erroneous deprivation also applies to the specifics of this case. Respondents do not dispute that M.P.S.M. has been seeking sponsorship since September 2025, that ORR has known of the biological relationship for months, or that ORR has completely failed to take the minimal steps necessary to complete processing—including DNA confirmation. Respondents' opposition presents a handful of post-litigation facts that demonstrate little, if any, genuine risk in releasing Petitioner to her sponsor sister's custody. These concerns, coupled with Respondents' own admission of their pattern of erroneous deprivation of rights in this exact context, underscores the high risk here. The second *Mathews* factor weighs heavily for Petitioner.

3. RESPONDENTS IDENTIFY NO COUNTERVAILING INTEREST

Petitioner identified the government's interest here is in child welfare and public safety—interests already served by reunification with a suitable family member. ECF No. 2 at 14:15-21. Respondents identify **no** danger, safety, or flight risk- finding to justify continued detention. *See generally* ECF No. 10. They wholly ignore the significant fiscal and administrative burden of unnecessary custodial placement. ECF No. 2 at 15:2-7; *cf.* ECF No. 10. As courts have recognized, prolonged ORR detention is costly and contrary to both congressional intent and

child welfare. *See Saravia*, 280 F. Supp. 3d at 1196 (prolonged ORR detention undermines TVPRA purpose); *Beltran*, 222 F. Supp. 3d at 486–87 (continued custody wastes resources and contradicts statutory intent).

Moreover, Respondents do not identify a single governmental interest that requires continued separation or supports additional process in this case. ORR has had months to complete its own required procedures and failed to do so. The third *Mathews* factor weighs heavily for Petitioner.

Therefore, Respondents have failed to overcome C.S.M.'s likely success on the merits of her due process claims.

II. RESPONDENTS OFFER NO DEFENSE TO C.S.M.'S IRREPARABLE HARM

Petitioner has also shown she faces ongoing and irreparable harm absent immediate injunctive relief. As set out in the TRO application, C.S.M. has suffered escalating emotional distress during her prolonged confinement in ORR custody, compounded by the recent death of her mother and her inability to grieve with the only family member available to care for her—her own sister. ECF No. 2 at 9:10-13. The psychological, developmental, and familial harms flowing from prolonged separation cannot be remedied after the fact, and courts have long recognized such harms as paradigmatic forms of irreparable injury. *See Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (deprivation of constitutional rights constitutes irreparable harm); *Ms. L. v. ICE*, 310 F. Supp. 3d 1133, 1146 (S.D. Cal. 2018) (forced family separation causes lasting emotional and psychological trauma); *Ariz. Dream Act*

Coal. v. Brewer, 757 F.3d 1053, 1068–69 (9th Cir. 2014) (constitutional violations and disruption of family stability are irreparable injuries).

Respondents address C.S.M.'s harm with a single conclusory assertion: "C.S.M. is not facing irreparable harm from the current longstanding status quo." ECF No. 10 at 13:7–8. Respondents' statement is unsupported by evidence, inconsistent with the record, and contrary to settled law. The unrefuted evidence shows that C.S.M.'s emotional condition has deteriorated; she experiences persistent worry, visible distress, and ongoing grief that cannot be processed in institutional custody. ECF No. 2 at 4:1-6. Respondents' bare denial of harm cannot overcome the detailed, contemporaneous evidence demonstrating it.

Respondents' claim that they "may" issue a final decision sometime before the end of the month fares no better. ECF No. 10 at 2:11-12, 10:14-16. As explained, Respondents' request for additional time is meaningless here. The due process violations have already occurred. Respondents' prospective promise that they "may" act on M.P.S.M.'s reunification application now that this case has been filed does not cure past violations or eliminate the immediate, ongoing harm that necessitates this injunctive relief. A speculative future decision cannot undo the harm C.S.M. continues to suffer each day she remains separated from her sister.

For these reasons, Respondents have not meaningfully contested irreparable harm, and the evidence in the TRO record confirms the second TRO factor is satisfied.

III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST FAVOR RELEASE OF C.S.M.

The balance of equities and public interest sharply favor injunctive relief here. C.S.M. is a child who remains in custody solely because ORR has failed to carry out mandatory procedures to release her for nearly 200 days. Releasing C.S.M. to her sister poses no safety risk and immediately halts the mounting emotional harm documented in the TRO application. ECF No. 2 at 4:1-7. By contrast, every day of continued detention deepens that harm, while providing no countervailing benefit to the government or the public.

Respondents' only attempt to rebut this point is the conclusory claim that Petitioner "seeks to disrupt the status quo by forcing ORR to abdicate its statutory obligations on a TRO basis." ECF No. 10 at 13:6–8. That assertion is unsupported by evidence, law, or logic. Releasing a child to a vetted family member does not require ORR to abandon any statutory duty. Just the opposite. It requires ORR to fulfill the duty Congress actually imposed: *prompt placement of the child in the least restrictive setting*. Respondents cite no authority suggesting the public interest is served by extending an unlawful detention or by continuing to expend scarce resources to confine a child who has a suitable sponsor. Nor could they.

Here, the equities run entirely in one direction: continued detention inflicts concrete harm on C.S.M., wastes government resources, and frustrates Congress's protective purpose under the TVPRA. Reunification, by contrast, aligns with child welfare, family unity, fiscal efficiency, and the public's interest in ensuring federal

agencies comply with governing law.

For these reasons, the balance of equities and the public interest overwhelmingly support granting the relief sought in Petitioner's TRO application.

IV. THE COURT SHOULD DENY RESPONDENTS' STAY REQUEST AND GRANT THE TRO

Respondents' request that the Court postpone ruling on this TRO, while ORR "finishes its process." ECF No. 10 at 13:17-19. The Court should deny Respondents' request.

At the time of this filing, C.S.M. has already spent 196 days in ORR custody without a single danger, safety, or flight risk finding, and without ORR completing the basic steps required for release to her available sponsor, despite M.P.S.M.'s continued and active cooperation. ECF No. 2 at 2:13-4:7. Here, where the injury is C.S.M.'s ongoing unlawful detention and delayed reunification, a stay is not a neutral pause—it is continued harm. Granting Respondents more time to process the same application would only prolong the very harm the TRO is meant to prevent. It also invites punitive or retaliatory denial of the M.P.S.M.'s application by ORR for bringing this action.

Respondents' justification rests entirely on speculation that ORR "may" issue a decision before the end of the month. ECF No. 10-1 at 10:26-11:1. A tentative future action does not remedy past violations or halt ongoing constitutional and statutory injury. Further, granting Respondents more time rewards months of unjustified delay and leaves Petitioner in the exact posture Congress sought to

prevent. Because Respondents identify no legitimate governmental interest in further delay in releasing C.S.M. the request for a stay should be denied.

This Court should, furthermore, issue the TRO where C.S.M. has met the standard for both a prohibitory and a mandatory injunction. Respondent's argument that C.S.M. is seeking a mandatory injunction assumes that C.S.M.'s detention is the status quo based only on the fact that "[C.S.M.] has been within the custody of ORR for about six months" immediately preceding the filing of this lawsuit. ECF. No. 10 at 3: 21-23. But "'status quo ante litem' does not mean the status quo is any situation that precedes a lawsuit. Instead, '[t]he status quo is the last uncontested status which preceded the pending controversy.'" *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1090 (E.D. Cal. 2025) (quoting *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963)) (alterations in the original). Respondents also claim that C.S.M. is seeking to "disrupt the status quo by forcing ORR to abdicate its statutory obligations." ECF No. 10 at 13:6-7. ORR has had since November 2025 to fulfill its statutory obligations but has failed to do so.

A mandatory injunction should still issue where "extreme or very serious damage will result" that is not "capable of compensation in damages," and the merits of the case are not "doubtful." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009) (quotation marks omitted). Those requirements are met here. C.S.M.'s "unlawful detention," at a time when she is grieving the loss of her mother in isolation, is "extreme or very serious damage" not "capable of compensation in damages." *See Hernandez v. Sessions*, 872 F.3d 976,

999 (9th Cir. 2017). And, relief is not doubtful where Respondents' actions have violated the TVPRA and its implementing policies." *See I.J. v. Keeton*, No. CV1901904PHXSMBJZB, 2019 WL 13196148, at *8 (D. Ariz. Apr. 17, 2019) (assuming without deciding that "even if the injunctive relief sought could be characterized as mandatory," the lack of a valid age determination by ORR necessitated relief).

CONCLUSION

For the foregoing reasons, this Court should grant Petitioner's *ex parte* motion for a temporary restraining order and order C.S.M.'s immediate release to her sister M.P.S.M.

Dated: March 18, 2026

Respectfully Submitted,

/s/Caitlin Jolley
Caitlin Jolley
Attorney for Petitioner

WORD COUNT CERTIFICATION

The undersigned, counsel of record for Petitioners certifies that this Reply to *Ex Parte* Motion for Temporary Restraining Order contains 3,541 words, which complies with the word limit of L.R. 11-6.1.

Dated: March 18, 2026

Respectfully Submitted,

/s/Caitlin Jolley
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