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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

J.V.C.D., and A.M.C.D., Minors,
and A.S.C.D, as Next Friend of Minors,

Petitioners,

v.

ANA BABUDAR, 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;
ROBERT F. KENNEDY, Secretary of the
U.S. Department of Health and Human
Services; TODD M. LYONS, Acting
Director of U.S. Immigration and
Customs Enforcement; MARKWAYNE
MULLIN, Secretary of the U.S.
Department of Homeland Security.

Respondents.

No. 5:26-cv-01820

Hon. Sheri Pym

**PETITIONERS' TRAVERSE IN
SUPPORT OF VERIFIED
PETITION FOR WRIT OF
HABEAS CORPUS**

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1 **I. INTRODUCTION**

2 Petitioners J.V.C.D. and A.M.C.D. are unaccompanied child (“UC”)
3 siblings who have been held in the custody of the Office of Refugee Resettlement
4 (“ORR”) for more than seven months despite the availability of a suitable, willing,
5 and vetted family sponsor—their adult United States citizen half-sister A.S.C.D.
6 J.V.C.D., just thirteen years old, has been forced to take on a caregiving role for
7 A.M.C.D., a six-year-old with Down syndrome whose mental health has
8 deteriorated rapidly in detention. During this entire period of confinement,
9 Respondents have never determined that either child poses a danger, presents a
10 flight risk, or that their proposed sponsor is unfit to assume custody. Nevertheless,
11 Petitioners remain confined in federal custody.

12 Petitioners’ continued detention and separation from their sister violate the
13 most basic statutory and constitutional protections governing the care and
14 placement of unaccompanied children. Congress enacted the Trafficking Victims
15 Protection Reauthorization Act (“TVPRA”) to prevent precisely this outcome,
16 mandating that UC’s be placed promptly in the least restrictive setting consistent
17 with their best interests, with particular emphasis on family unity. Once a suitable
18 sponsor has been identified and vetted, the statute does not permit continued
19 detention. An agency’s decision to prolong custody while it pursues discretionary
20 or belated verification steps does not constitute a statutory basis for detention. See
21 *Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001); *Reno v. Flores*, 507 U.S. 292,
22 302 (1993). As set forth below, Respondents’ Answer does not dispute the core
23 facts underlying this petition nor their constitutionally and statutorily protected
24 interests—arguing only that prudential exhaustion should have been required and
25 characterizing their unlawful detention as a mere unfortunate “delay.” Those
26 positions are incompatible with the TVPRA, the Americans with Disabilities Act
27 (“ADA”) and the Due Process Clause. Habeas relief is warranted where children
28 remain in federal custody not because release would be unsafe or unlawful, but

1 because the agency has failed to act. Petitioners therefore seek immediate release
2 from ORR custody.

3 **II. FACTUAL HISTORY AND RESPONDENTS' CONCESSIONS**

4 The facts alleged in the Petition are incorporated by reference herein.
5 (Petition for Writ of Habeas Corpus, Dkt. No. 2).

6 Petitioners J.V.C.D. and A.M.C.D. have remained in ORR custody since
7 September 11, 2025. J.V.C.D. is thirteen years old. A.M.C.D. is six years old,
8 non-verbal, and has Down syndrome. (Dkt. 2 ¶ 1–2, 7).

9 Respondents acknowledge that ORR identified Petitioners' adult half-sister,
10 A.S.C.D., a United States citizen, on or about September 16, 2025. (*See*
11 Declaration of Toby Biswas, Dkt. 12-1 ¶ 31.) Respondents further acknowledge
12 that A.S.C.D. timely complied with every sponsor-controlled requirement imposed
13 by ORR, including submission of identity documentation, proof of address and
14 income, verification of family relationship via birth certificate trail, background
15 checks, and participation in all required interviews and screening steps. (*See*
16 Dkt. 12-1 ¶ 31–54.) The completed sponsor application ("FRP") was submitted
17 November 17, 2025. (Dkt. 12-1 ¶ 40). Respondents likewise acknowledge that
18 A.S.C.D. completed two separate home studies—one required due to A.M.C.D.'s
19 disability and a second discretionary home study for J.V.C.D.—and that both
20 home studies returned positive recommendations supporting placement of both
21 children with their sister. (Dkt. 12-1 ¶ 43–44, 47–48). Respondents further
22 acknowledge that due to the ORR-caused delays in the reunification process,
23 further delays were incurred. For example, Next Friend and the Alternate
24 Caregiver ("ACG") completed internet background checks in November but were
25 required to repeat them in January since under ORR policy, as internet background
26 checks are only valid for 90 days. (*See* Dkt. 12-1 ¶ 34, 46; ORR UC Program
27 Policy Guide 2.5.4).

1 While Respondents do not explain why it took them nearly five months to
 2 complete the above steps, they do concede that they were all complete by February
 3 9, 2026. (See Dkt 12-1 ¶ 9).

4 On March 6, 2026, ORR updated its policy guide to collapse the prior
 5 sponsor categories of Category 2A (second-degree relative with prior caregiving
 6 relationship) and Category 2B (second-degree relative with no prior caregiving
 7 relationship) into a single Category 2 sponsor type. (ORR UC Program Policy
 8 Guide 2.2.1 (Rev. Mar. 6, 2026)).

9 On March 17, 2026, in light of Petitioners' continued detention,
 10 Undersigned counsel's office sent a demand letter to ORR Director Angie Salazar
 11 requesting their release to A.S.C.D. On March 27, 2026, the ORR Appointed
 12 Child Advocate submitted, via Best Interest Determination ("BID"), her
 13 assessment that swift release was in the children's best interests. (See Young
 14 Center Best Interest Determination, Dkt. 2-2). On that same date, four months
 15 after the completed FRP had been submitted, ORR requested DNA testing for the
 16 first time. (Dkt. 12-1 ¶ 49).

17 DNA testing is not required under statute or regulation. Rather, DNA testing
 18 was implemented for biological relative sponsors via ORR policy in March 2025.
 19 See generally Office of Refugee Resettlement, *Field Guidance No. 27: DNA*
 20 *Testing Expansion* (Mar. 14, 2025), rev. May 15, 2025.¹

21 Despite this guidance, ORR did not request DNA testing until March 27,
 22 2026. (See Dkt. 12-1 ¶ 49). Nevertheless, Respondents concede that DNA testing
 23 confirmed the biological sibling relationship between petitioner children and
 24 confirmed that A.M.C.D. is the biological half-sibling of the proposed sponsor,
 25

26 ¹ Office of Refugee Resettlement, *Field Guidance No. 27: DNA Testing Expansion*
 27 (Mar. 14, 2025), rev. May 15, 2025. Office of Refugee Resettlement, Field
 28 Guidance No. 27: DNA Testing Expansion (Mar. 14, 2025), rev. May 15, 2025.
[https://acf.gov/sites/default/files/documents/orr/FG-27 -](https://acf.gov/sites/default/files/documents/orr/FG-27_-_DNA_Testing_Expansion.pdf)
[DNA_Testing_Expansion.pdf](https://acf.gov/sites/default/files/documents/orr/FG-27_-_DNA_Testing_Expansion.pdf)

1 A.S.C.D., thereby establishing a clear biological family relationship among the
2 siblings and their proposed sponsor. (*See* Dkt. 12-1 ¶ 54–56). Respondents further
3 state that DNA testing conducted for J.V.C.D. yielded an inconclusive result and
4 that ORR requested additional testing. (Dkt. 12-1 ¶ 54). Respondents have
5 maintained that ORR must await final DNA results for J.V.C.D. before issuing a
6 sponsor-suitability determination and release decision. (Dkt. 2 ¶ 6).

7 Respondents also point to fingerprinting issues as a basis for delay, stating
8 that A.S.C.D.'s fingerprints were returned as unclassifiable on two occasions in
9 October 2025. (*See* Respondents' Answer to Petition for Writ of Habeas Corpus,
10 Dkt. 12 at 11). However, alternative background checks returned clear and it
11 appears this issue was resolved months ago in January 2026. (Dkt. 12-1 ¶ 46).

12 Respondents do not deny the significant and escalating harm Petitioners
13 have suffered while in federal custody, nor wrestle with the violations of
14 A.M.D.C.'s rights under the ADA. Both children experience persistent separation
15 anxiety and emotional distress resulting from prolonged confinement and ongoing
16 uncertainty regarding reunification. (Dkt. 2 ¶ 6, 58). A.M.C.D., a six-year-old
17 child with Down syndrome, has engaged in self-injurious behavior, including
18 head-banging, since entering ORR custody—behavior not present prior to
19 detention and recognized as a distress response in children with developmental
20 disabilities. (Dkt. 2 ¶ 7, 60; BID, Dkt. 2-2). J.V.C.D. has experienced worsening
21 anxiety with physical manifestations, including compulsive scratching and
22 difficulty functioning and focusing, and has assumed a de facto caregiving and
23 emotional-regulation role for her younger brother despite her own escalating
24 emotional harm. (Dkt. 2 ¶¶ 8, 59, 61).

25 Respondents likewise do not challenge the federally appointed Child
26 Advocate's BID (Dkt. 2-2), which concluded nearly a month ago that swift
27 reunification of both children is in their best interests and their prolonged
28

1 detention was harming them. (Dkt. 2-2; *See generally* Dkt. 12). Under Federal
 2 Rule of Civil Procedure 8(b)(6), Respondents' failure to deny these factual
 3 statements—including the harms Petitioners have suffered and the existence and
 4 substance of the Child Advocate's BID—constitutes an admission. *See ABP v.*
 5 *Countrywide Fin. Corp.*, 802 F. Supp. 2d 1125, 1132 (C.D. Cal. 2011); *Jenkins v.*
 6 *County of Riverside*, 398 F.3d 1093, 1095 n.4 (9th Cir. 2005).

7 **III. ARGUMENT**

8 **A. PETITIONERS' CLAIMS PROPERLY SOUND IN HABEAS, 9 AND PRUDENTIAL ADMINISTRATIVE EXHAUSTION IS 10 NOT REQUIRED**

11 Respondents argue that Petitioners should be required to exhaust
 12 administrative remedies before seeking judicial relief, characterizing this case as a
 13 challenge to agency delay that must run its course through ORR's internal
 14 processes. That argument misconstrues both the nature of Petitioners' claims and
 15 the governing law.

16 Exhaustion in the habeas context is prudential, not jurisdictional, and courts
 17 "retain discretion to waive the exhaustion requirement where appropriate." *Laing*
 18 *v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004); *Hernandez v. Sessions*,
 19 872 F.3d 976, 988 (9th Cir. 2017). Even where prudential exhaustion might
 20 otherwise apply, it is not required when "administrative remedies are inadequate
 21 or not efficacious, pursuit of administrative remedies would be a futile gesture,
 22 [or] irreparable injury will result." *Laing*, 370 F.3d at 1000; see also *Hernandez*,
 23 872 F.3d at 988. Each of those exceptions applies here. Courts have likewise held
 24 that where the government has already had ample time to act, requiring additional
 25 administrative process only compounds the constitutional injury, warranting
 26 immediate habeas relief rather than further delay. *See Santos ex rel. O.G.L.S. v.*
 27 *Smith*, 260 F. Supp. 3d 598, 623–25 (W.D. Va. 2017) (ordering immediate release
 28 from ORR custody where further administrative review would exacerbate due
 process violations).

1 First, there is no available administrative remedy for Petitioners to exhaust.
2 Under ORR's regulations, a sponsor may seek internal administrative review only
3 after ORR issues a Sponsor Suitability Determination or formally denies release.
4 See 45 C.F.R. §§ 410.1205(c), 410.1206. ORR has issued neither despite the
5 passage of months. Because Respondents have declined to issue any release
6 decision or denial, there is no agency action to appeal and no administrative forum
7 in which Petitioners or their sister can challenge continued custody. Exhaustion is
8 therefore not merely premature—it is impossible.

9 Second, requiring exhaustion would be futile because ORR's inaction is
10 itself the alleged wrong. Petitioners do not seek to bypass a functioning
11 administrative process; they challenge continued detention resulting from ORR's
12 refusal to complete that process by issuing a reviewable decision. Where "delay
13 results from the agency's failure to act," exhaustion serves no corrective function
14 and "would be a futile gesture." *Laing*, 370 F.3d at 1000. Requiring Petitioners to
15 wait indefinitely for ORR to act would insulate agency inaction from judicial
16 review and convert prudential exhaustion into a mechanism for perpetuating
17 detention.

18 Third, requiring exhaustion would inflict irreparable harm. Petitioners are
19 young children who have already spent more than seven months in federal
20 custody, separated from their sister despite the absence of any safety-based
21 justification for continued detention. Each additional day in custody compounds
22 that harm. Courts in this Circuit have repeatedly recognized that habeas petitioners
23 suffer potentially irreparable injury "every day that they remain in custody without
24 a hearing," particularly where continued detention may ultimately prove unlawful.
25 *Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018).

26 Finally, the *Puga v. Chertoff* factors Respondents cite for the proposition
27 that prudential exhaustion should be required weigh strongly in *Petitioners* favor.
28

1 (Dkt. 2 p. 13; *Puga v. Chertoff* 488 F. 3d. 812, 815 (9th. Cir. 2007)). In that case,
2 the Ninth Circuit held that exhaustion is prudential where “(1) agency expertise
3 makes agency consideration necessary to generate a proper record... (2) relaxation
4 of the requirement would encourage deliberate bypass of the administrative
5 scheme and (3) administrative review is likely to allow the agency to correct its
6 own mistakes and to preclude the need for judicial review.” (*Id.*). In Petitioner’s
7 case, the agency *has* generated a record, as outlined in Petitioners’ moving papers,
8 the Child Advocate BID, and the agency’s own declaration. This record is clear: it
9 is in Petitioners’ best interests to be released to their sponsor promptly as the
10 TVPRA mandates. Secondly, there is no indication of “deliberate bypass” on the
11 part of Petitioners or their sponsor. Quite the contrary—Petitioners have complied
12 with everything the government has asked of them and sponsor and Next Friend
13 has also promptly done so, submitting her FRP in November 2025 and going so
14 far as to offer to pay for DNA testing out of pocket and seeking Congressional
15 assistance to get ORR to move *on its own processes*. (Dkt. 2 ¶ 56). Finally, as
16 outlined above—the agency has not issued any final decision to allow for
17 administrative review, despite having had seven months to do so. In fact—rather
18 than correcting errors through the process, it appears that errors are compounding.
19 For example-- after inexplicably waiting nearly seven months to schedule DNA
20 testing, Respondents indicate that there was a problem with the testing and it must
21 be redone. (Dkt. 12-1 ¶ 56).

22 Thus, requiring Petitioners to await a decision that ORR has thus far
23 declined to issue would transform prudential exhaustion into a shield for unlawful
24 detention. Habeas corpus exists to prevent precisely that result. Where, as here, the
25 government continues to restrain children’s liberty without issuing any reviewable
26 decision and without identifying a lawful basis for continued custody, exhaustion
27 is not required, and judicial intervention is appropriate.

28

1 **B. PETITIONERS CONTIUNED DETENTION IS UNLAWFUL**
2 **AND CANNOT BE DISMISSED AS A MERE DELAY**

3 The central question before the Court is not whether or not ORR has taken
4 some administrative steps, but whether it presently has lawful authority to
5 continue detaining Petitioners. It does not.

6 **1. Petitioners' Continued Detention Violates Their Statutory and**
7 **Constitutional Rights and Dismissal as "Delay" is Unavailing**

8 Respondents insultingly dismiss the seven month detention of a six-year-old
9 with Down syndrome and his thirteen year old sister as mere "delay," and falsely
10 claim that Petitioners' complaint is that their sister "has not immediately or rapidly
11 been granted custody." (Dtk. 12 at p. 10). Petitioners do not claim that they must
12 "immediately" have been released to their sister upon their detention on
13 September 11, 2026.² They acknowledge that the TVPRA and regulations require
14 vetting of their sister for fitness and identity. They filed the instant petition only
15 after ORR has had *seven months* to complete this vetting, has confirmed the
16 sister's identity and fitness and nevertheless detains them in violation of their
17 Constitutional and statutory rights.

18 TVPRA mandates that a UC in ORR custody "shall be *promptly* placed in
19 the least restrictive setting that is in the best interest of the child." 8 U.S.C.
20 § 1232(c)(2)(A) (emphasis added). As courts have recognized, this mandatory
21 language reflects Congress's determination that federal custody is not the default
22 condition for unaccompanied children once a suitable family placement has been
23 identified and vetted. See *Saravia v. Sessions*,
24 280 F. Supp. 3d 1168, 1178, 1196 (N.D. Cal. 2017) (holding that the TVPRA

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26 ² Respondents assert in passing at Dkt. 12 p. 6 that perhaps the instant detention
27 could have been challenged via Mandamus or under the APA. While Petitioners
28 agree that there may be additional avenues for redressing the harms done to them,
the existence of those avenues does not abrogate their right to challenge their
unlawful detention via habeas.

mandates release absent individualized findings that custody is necessary); see also *Flores v. Sessions*, 862 F.3d 863, 876 (9th Cir. 2017) (emphasizing the statutory focus on care and placement rather than detention).

Where ORR has identified a close-relative sponsor, received a complete FRP, obtained positive home-study recommendations, and identified no safety-based impediment to release, the TVPRA imposes a legal obligation to effectuate prompt placement. See *Lucas R. v. Azar*, No. CV 18-5741-DMG (PLAx), 2018 WL 7200716, at 9 (C.D. Cal. Dec. 27, 2018)* (explaining that the TVPRA’s mandatory language creates a substantive entitlement enforceable through habeas review).

Here, Respondents acknowledge that ORR identified Petitioners’ half-sister, A.S.C.D., as a potential sponsor in September 2025, that she submitted a completed FRP in November 2025, and that her identity, relationship, ability to care for and provide for children, and any criminal background had been confirmed via ORR processes by February 9, 2026. (See Dkt. 12-1 ¶ 48).

Nevertheless, ORR has neither issued a release decision nor a denial justifying continued custody, and continues to detain Petitioners solely because agency-controlled administrative steps remain incomplete (See *id.* ¶ 67).

Where ORR has completed the substantive requirements for reunification but declines to issue either a release decision or a denial tethered to safety-based findings, continued detention is no longer authorized by the TVPRA or the Due Process Clause. Under those circumstances, custody is untethered from the TVPRA’s purpose and exceeds ORR’s lawful authority.

2. Prolonged Inaction is Not Adjudication

Respondents argue that Petitioners have not established unlawful detention because ORR continues to engage in sponsor processing. (See Dkt. 12 at 14-16). That argument fails as a matter of law. Whether continued detention is lawful turns on the scope of authority Congress conferred by statute—not on agency

1 practices or the pace of internal processing. See *Jennings v. Rodriguez*,
2 583 U.S. 281, 296–97 (2018).

3 Here, ORR received the second positive home study recommending
4 placement with A.S.C.D. no later than February 9, 2026, took no adjudicatory
5 action, issued no determination, and failed to respond to repeated inquiries from
6 the federally appointed Child Advocate regarding DNA scheduling for nearly two
7 months.. Any period of unlawful detention is detrimental, but months of unlawful
8 detention of young children-- particularly a child like A.M.D.C. who has suffered
9 greatly in ORR detention as a result of his tender age and intellectual disability—
10 shocks the conscience. ORR’s inaction did not preserve the status quo – it
11 prolonged the children’s detention: previously completed background checks
12 expired and had to be repeated solely due to the passage of time, and additional
13 prerequisites were layered on later in the process and operationalized through
14 ORR’s restructured sponsor-vetting process during the pendency of this case,
15 including belated DNA testing that extended custody and the late-raised
16 requirement of Social Security number verification that had never previously been
17 raised, and an additional discretionary home study that was ordered to be
18 completed in January 2026 due to a change in ORR policy. (See Dkt. 2 ¶ 49).; see
19 generally Office of Refugee Resettlement, *Field Guidance No. 27: DNA Testing*
20 *Expansion* (Mar. 14, 2025), rev. May 15, 2025; see generally Office of Refugee
21 Resettlement, *Field Guidance No. 24: ORR Division of Sponsor Administration*
22 *Role Guidance* (Aug. 23, 2023), rev. Jan. 26, 2026.)³

23 Civil custody of children must remain narrowly tailored to its protective
24 purpose and may not persist once continued detention is no longer necessary to
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26 ³ ORR Field Guidance No. 24 (rev. Jan. 26, 2026),
27 [https://acf.gov/sites/default/files/documents/orr/FG-24_ORR-Division-of-Sponsor-](https://acf.gov/sites/default/files/documents/orr/FG-24_ORR-Division-of-Sponsor-Administration-Role-Guidance.pdf)
28 [Administration-Role-Guidance.pdf](https://acf.gov/sites/default/files/documents/orr/FG-24_ORR-Division-of-Sponsor-Administration-Role-Guidance.pdf)

1 ensure safety or welfare. See *Reno v. Flores*, 507 U.S. 292, 302–03 (1993).
 2 Where, as here, custody persists solely because agency-controlled steps were
 3 initiated belatedly or expanded as a consequence of prior inaction, detention is no
 4 longer reasonably related to its statutory justification. See *Zadvydas v. Davis*,
 5 533 U.S. 678, 690–91 (2001).

6 **3. The Question of Whether to Release the Children is Not**
“Complex” as Respondents Assert

7 Respondents argue that Petitioners’ habeas claims amount to nothing more
 8 than dissatisfaction with the pace of ORR’s internal processing and that any delay
 9 is attributable to the complexity of sponsor vetting or to the sponsor herself. (See
 10 Dkt. 12 at 11). That characterization misstates both the nature of Petitioners’
 11 claims and the factual record.

12 Petitioners do not contend merely that the reunification process is taking
 13 “too long,” nor do they assert that any delay or sponsor vetting timeline would be
 14 unlawful. Indeed, Petitioners did not challenge their continued detention via a
 15 demand letter until March 17, 2026, over a month after ORR received a positive
 16 home-study recommendation and then apparently stopped any forward movement
 17 on their reunification, and a full four months after the FRP was completed.
 18 Further, Petitioners agree that the TVPRA and the Foundational Rule require ORR
 19 to vet the safety and identity of a potential sponsor, a process that they state can be
 20 “complex.”

21 The question is not complex in this case though. Respondents’ own timeline
 22 asserts that A.S.C.D.’s identity, relationship and fitness to care for the children
 23 was confirmed at the latest on February 9, 2026. (Dkt. 12-1 ¶¶ 28-48). There is
 24 simply no statutory or regulatory basis to prolong their detention. This is not a
 25 complex question, it is an easy one—the children must be immediately released.

26 Respondents’ reliance on *Zadvydas v. Davis* rests on a misreading of that
 27 decision. *Zadvydas* did not require detainees to endure a fixed period of custody
 28

1 before seeking judicial relief, nor did it limit habeas review to post-removal-order
2 detention. It held that civil detention becomes unlawful once it is no longer
3 reasonably related to its statutory purpose. 533 U.S. 678, 690 (2001). Petitioners
4 do not challenge the mere passage of time. They challenge continued detention
5 after ORR completed the substantive prerequisites for release, identified no
6 safety-based justification for continued custody, and failed to issue any release or
7 denial decision. Where detention persists solely due to agency-controlled delay, it
8 is no longer tethered to any valid statutory purpose and is unlawful under
9 *Zadvydas*. Courts have rightly refused to allow ORR additional processes to cure
10 such violations. (See *Santos v. Smith*, 260 F. Supp. 3d 598, 623–25 (W.D. Va.
11 2017) (where ORR delayed more than fourteen months following a home study
12 recommending reunification and sought additional time for further process, the
13 court held that the due process violations “cannot be cured at this point with a
14 belated hearing” and ordered immediate release via habeas)).

15 Respondents’ reliance on DNA testing does not support their continued
16 detention nor does it add “complexity.” DNA testing is not mandated under the
17 TVPRA nor the Foundational Rule, and Respondents acknowledge that the family
18 relationship was confirmed via a birth certificate trail *over five months ago* on
19 November 10, 2025. (See Dkt. 12-1 ¶ 39). The only authority Respondents point to
20 for “requiring” DNA testing is ORR Field Guidance 27, which was promulgated
21 in March 2025. (See Dkt. 12-1 ¶ 21). They provide no explanation for why they
22 waited seven months and the threat of the instant litigation to request this testing
23 they now assert is “required.”

24 Further, Respondents acknowledge that DNA testing has already confirmed
25 that Petitioners are biological siblings and that A.M.C.D. is the biological
26 half-sibling of the proposed sponsor, A.S.C.D. (See Dkt. 2 ¶¶ 54–56). Respondents
27 do not allege that DNA testing raised any concern regarding sponsor identity,
28

1 biological relationships, or sponsor suitability (id. ¶ 54-56). Although Respondents
2 assert that ORR must await final DNA results for J.V.C.D. before issuing a release
3 decision, that position is unsupported by law. (Id. ¶ 56). Further, Courts in this
4 District have ordered immediate release of a child under nearly identical
5 circumstances.) See *C.S.M. v. Hernandez*, No. 5:26-cv-01144-JWH-ACCV (C.D.
6 Cal. Mar. 20, 2026) (transcript and minute order granting ex parte TRO and
7 ordering immediate release of child despite pending DNA testing).

8 Most fundamentally, Respondents' assertions of complexity cannot be
9 reconciled with the conclusions of the Child Advocate, whom the TVPRA
10 authorizes the Secretary of Health and Human Services to appoint as an
11 independent child advocate for vulnerable UC's, to investigate, advocate for and
12 make recommendations regarding the child's best interests. 8 U.S.C. § 1232(c)(6).

13 After reviewing the case in full and with familiarity with ORR's
14 reunification processes, the Child Advocate issued a BID nearly a month ago
15 concluding that continued detention is harming both children and recommending
16 swift reunification with their sister (See Dkt. 2-2). Respondents do not dispute that
17 determination.

18 Respondents' attempt to recast Petitioners' ongoing detention as a
19 unavoidable delays attributable to the "complexity" of the process thus fails.
20 Petitioners do not seek judicial supervision of ORR's workflow. They seek relief
21 from continued detention justified only by post-hoc invocations of complexity that
22 neither implicate child safety nor authorize further custody under the TVPRA.

23 **4. Respondents Ignore Mandatory Regulatory Timing**
24 **Requirements**

25 Nowhere in their Answer do Respondents meaningfully engage with the
26 regulatory deadlines governing when unaccompanied children must be released to
27 close-relative sponsors.
28

1 The regulations implementing the TVPRA reflect a clear judgment: children
 2 should not remain in federal custody by default while agency processes remain
 3 unresolved. Where the proposed sponsor is a close relative—such as a biological
 4 sibling or half-sibling—ORR must adjudicate the sponsorship application within
 5 fourteen calendar days, absent genuinely complicating factors. 45 C.F.R.
 6 § 410.1205(b). Where an application remains pending, ORR must conduct an
 7 automatic supervisory review within ninety days of the child’s entry into custody
 8 and take affirmative steps to resolve the cause of delay. 45 C.F.R. § 410.1207(a).

9 Respondents do not contend that either requirement was satisfied here.
 10 Petitioners have remained in ORR custody for months after submission of a
 11 completed FRP, despite positive home studies, DNA confirmation of family
 12 relationships, background checks raising no safety concerns, medical clearance for
 13 release and issuance of a BID recommending swift reunification⁴. (See Dkt. 2-2;
 14 Dkt. 2 ¶ 67; Dkt. 12 ¶ 38, 40; 42, 44). Respondents identify no Constitutional,
 15 statutory or regulatory basis for Petitioners’ continued detention.

16 **5. Continued Detention Is Affirmatively Harmful And**
 17 **Contrary To Petitioners’ Best Interests And Contrary To**
A.M.C.D.’s Rights Under Federal Disability Law

18 As set forth above, the TVPRA mandates prompt placement of UC’s in the
 19 least restrictive setting consistent with their best interests, with express
 20 consideration of family unity. 8 U.S.C. § 1232(c)(2)(A); 45 C.F.R. § 410.1103(b).
 21 Even apart from Respondents’ lack of statutory authority to continue detention, the
 22 record establishes that ongoing custody is affirmatively harming both children and
 23
 24

25 ⁴ Respondents incorrectly state that A.S.C.D. is classified “Category 2B” sponsor
 26 (meaning a second degree relative who did not previously have caregiving
 27 responsibility for the children). As of March 6, 2026, ORR policy removed the
 28 distinction between Category 2A (prior caregivers) and Category 2B sponsors, and
 both are treated the same for sponsor vetting purposes. (See ORR Policy Guide
 § 2.2 (Sponsor Categories) (rev. Mar. 6, 2026))

1 is contrary to their best interests and to A.M.C.D.'s rights as a child with a
2 disability.

3 Here, ORR's federally appointed Child Advocate has concluded that
4 continued detention is harming both children and that swift reunification with their
5 sister, A.S.C.D, is in their best interests. (Dkt. 2-2.) Where the government's own
6 designated child-welfare expert has concluded that detention is harmful and that
7 reunification t is in the children's best interests, continued custody cannot be
8 justified.

9 The harms here are concrete and escalating. For A.M.C.D, prolonged
10 custody has resulted in self-injurious behaviors, including head-banging. (Dkt. 2
11 ¶ 7, 60; Dkt. 2-2.) For J.V.C.D., continued detention has produced escalating
12 anxiety with physical manifestations and has forced her into a de facto caregiving
13 role for her younger brother, notwithstanding her own developmental needs.
14 (Dkt. 2 ¶ 8, 59, 61; Dkt. 2-2.)

15 Continued detention is particularly harmful to six-year-old A.M.C.D.
16 because of his Down syndrome and documented developmental needs.
17 Section 504 of the Rehabilitation Act prohibits federal agencies from subjecting a
18 qualified individual with a disability to unnecessary institutionalization by reason
19 of disability. See 29 U.S.C. § 794; *Olmstead v. L.C.*, 527 U.S. 581, 600–01 (1999).
20 Detaining A.M.C.D. in an institutional setting that has precipitated self-injurious
21 behavior—while a safe, suitable family placement is available—constitutes
22 precisely the type of disability-based exclusion and failure to reasonably
23 accommodate that federal disability law forbids.

24 Respondents attempt to excuse these harms by emphasizing that Petitioners
25 entered the United States unaccompanied. (See Dkt. 12 at 11). That argument fails
26 as a matter of law. The TVPRA exists precisely because children arrive
27 unaccompanied, and it mandates prompt placement in the least restrictive setting
28

1 once a suitable sponsor has been identified and vetted. 8 U.S.C. § 1232(c)(2)(A).
2 Entry circumstances do not diminish children's liberty interests, erase the harms of
3 prolonged detention, or authorize continued custody months later where
4 Respondents concede sponsor suitability and identify no danger, flight risk, or
5 unfitness. See *Reno v. Flores*, 507 U.S. 292, 302 (1993) (civil immigration
6 custody must be reasonably related to its protective purpose and not excessive in
7 relation to that purpose).

8 Indeed, Respondents' own submissions identify only family separation—
9 not reunification—as potentially detrimental to the children. Respondents state
10 that releasing one sibling without the other would be detrimental to the children's
11 mental wellbeing because they rely on one another as their primary source of
12 emotional support. (See Dkt. 12 at 8.) At the same time, Respondents do not
13 contend that continued ORR custody is necessary to protect either child from harm
14 or that detention serves any child-welfare purpose. By Respondents' own
15 reasoning, the only identified danger is continued separation—not release.
16 Continued detention under these circumstances is unlawful.

17 IV. CONCLUSION

18 For more than seven months, Petitioners—two young siblings, one of whom
19 is a six-year-old child with Down syndrome—have remained in federal custody
20 despite the undisputed availability of a safe, suitable, and fully vetted family
21 sponsor. Respondents concede that Petitioners pose no danger, present no flight
22 risk, and that their adult U.S.-citizen half-sister has satisfied every substantive
23 requirement for reunification. They do not allege any doubt about the veracity of
24 the family relationship. Respondents likewise do not dispute that continued
25 detention is causing serious and escalating harm, nor do they contest the federally
26 appointed Child Advocate's determination that swift reunification is in Petitioners'
27 best interests.
28

1 The TVPRA, the Constitution and the Regulations do not permit prolonged
2 detention by default. Nor does the Constitution tolerate civil confinement
3 untethered from its statutory purpose. Where, as here, detention persists solely
4 because the agency has declined to issue a decision it is legally required to make—
5 and where each additional day of custody inflicts irreparable harm—habeas relief
6 is not only appropriate, it is essential.

7 Accordingly, Petitioners respectfully request that the Court grant the
8 Petition for Writ of Habeas Corpus and order their immediate release from ORR
9 custody to their sister, A.S.C.D., without further delay.

10
11 Respectfully submitted on April 24, 2026.

12
13
14 /s/ Emily Sugarman
15 **Emily Sugarman**

16
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