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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 EASTERN DIVISION

14 I.R.L.M., a minor,

15 Petitioner,

16 v.

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

20 Respondents.

Case No. 5:26-cv-04335-DTB

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

[Declaration of Marion Donovan-
Kaloust filed concurrently herewith]

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

1 **I. INTRODUCTION**

2 This case concerns an unaccompanied child who unnecessarily remains in
3 federal custody after nearly seven months despite Congress's direction that he be
4 "promptly placed in the least restrictive setting that is in the best interest of the
5 child." 8 U.S.C. § 1232(c)(2)(A). I.R.L.M. has spent approximately seven months in
6 Office of Refugee Resettlement's ("ORR") custody while his mother and maternal
7 aunt have, for the same period, been attempting to secure his release.

8 For all its detail, Respondents' Answer rests on a simple proposition: the child
9 must remain detained because ORR's prolonged reunification process is not yet
10 complete. Yet Respondents do not contend that Petitioner is dangerous, a flight risk,
11 or otherwise requires continued detention. Nor do they contend that Petitioner's
12 mother, or any of the members of the household to which Petitioner would be
13 released, pose any risk to the Petitioner. Instead, even after all these months,
14 Respondents maintain that *additional* review, vetting, and reunification steps are still
15 needed to process his application. Congress's command that unaccompanied
16 children be "promptly placed" in the least restrictive setting cannot be reconciled
17 with a process that permits detention to continue for as long as the Government can
18 identify another task to complete.

19 Petitioner does not challenge ORR's authority to vet potential sponsors. The
20 question is whether that authority permits ORR to continue detaining this
21 unaccompanied child—who has already been detained for approximately seven
22 months—under its current practices.¹ Congress's mandate of prompt placement,
23 reinforced by ORR's own regulations, contemplates sponsor adjudications measured
24 in days and supervisory review within ninety days, not detention measured in
25 hundreds of days, as here.

26 Respondents' procedural arguments fare no better. Respondents' reliance on
27 *Lucas R.* is misplaced, as that concerned the process governing release decisions and

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¹ As discussed *infra*, the process ORR states still remains to be completed will
undoubtedly extend this amount of time. Answer at 14:17-15:1.

1 sponsor denials. *See Lucas R. v. Becerra*, No. CV 18-5741-DMG (PLAx), 2022 WL
2 2177454 (C.D. Cal. Mar. 11, 2022). It did not authorize prolonged detention while
3 ORR stalls reunification.

4 Respondents also contend that habeas relief is premature because the
5 sponsorship process remains ongoing. This argument describes the injury rather than
6 answering it. Petitioner has spent more than 200 days in federal custody awaiting
7 reunification with his mother that Congress intended to be prompt. The TVPRA,
8 ORR's Foundational Rule, and the Fifth Amendment do not permit detention to
9 continue indefinitely simply because additional agency action remains outstanding.
10 This Petition should be granted.

I. FACTUAL AND PROCEDURAL BACKGROUND

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

15 I.R.L.M. entered ORR custody on January 15, 2026. Pet. ¶¶ 1, 21. He sought
16 reunification with his mother, F.L.M., a Category 1 sponsor residing in California,
17 and consistently expressed his desire to reunify with his family. *Id.* at ¶¶ 26, 33. His
18 mother has proved cooperative and diligent with ORR sponsorship procedures. *E.g.*,
19 *id.* at ¶¶ 29, 33. By March 2026, she had completed fingerprinting, provided
20 identification documents, supplied residential and household information,
21 participated in sponsor screening, and submitted additional information requested
22 throughout the reunification process. *Id.* at ¶¶ 4, 29, 33, 36. Prior to his mother's
23 efforts to comply with sponsorship requirements, Petitioner's maternal aunt
24 attempted sponsorship. After submitting required documents, including
25 identification, a birth certificate, proof of address, and income information, ORR
26 records state that Petitioner's aunt "will not be sponsoring"—no formal denial, no
27 written explanation of the change in status, no indication that his aunt formally
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1 withdrew her request.² *Id.* at ¶ 28.

2 Nevertheless, many months later, I.R.L.M. is still in ORR custody, and, as of
3 the filing of Respondents' Answer, reunification remains pending. *E.g.*,
4 Respondents' Answer, Dkt. 14 ("Answer") at 2:12-14. ORR's records document
5 I.R.L.M.'s sadness, anxiety, frustration, and growing hopelessness arising from his
6 prolonged separation from family. Pet. at ¶¶ 27, 30, 40, 41. Among other things, he
7 has been crying in the classroom and has become visibly upset discussing the length
8 of his detention and lack of progress toward reunification. *Id.* at ¶ 27.

9 II. LEGAL STANDARD

10 Respondent's Answer includes a description of the policies and procedures
11 ORR must follow when placing UCs with sponsors under the ORR
12 Unaccompanied Alien Children Bureau Policy Guide (the "Policy Guide"). *See*
13 Answer at 6:18-7:18 ("Answer"). Petitioner clarifies and supplements those
14 procedures here.

15 a. Release Timing Requirements

16 Notably absent from Respondents' Answer are the timing requirements
17 established by regulation that govern UC release. ORR must effectuate release to a
18 vetted sponsor – with preference for parents first – “without unnecessary delay,” and
19 begin sponsor assessment as soon as a child enters ORR custody. 45 C.F.R.
20 §§ 410.1200–1201; Policy Guide §§ 2.1, 2.2. To ensure UCs are released “in a safe,
21 efficient, manner without unnecessary delay,” ORR has mandated timeframes to
22 adjudicate a completed Family Reunification Packet (“FRP”). Absent complicating
23 factors, ORR must adjudicate completed FRPs within 10 calendar days for parent
24 sponsors and 14 calendar days for close relatives. 45 C.F.R § 410.1205(b). ORR is
25 further required to periodically review pending FRPs –specifically, a *formal review*
26 *every 90 days* for applications that remain pending – to ensure the reunification
27 process does not stall. 45 C.F.R § 410.1207(a). This review is not cursory; ORR

28 ² In its Answer, ORR contends that Petitioner's mother expressed interest in sponsoring
instead of his maternal aunt. *E.g.*, Answer at 16:6-8.

1 supervisory staff must timely resolve the reasons that a release application remains
2 pending and determine possible steps to accelerate the child's safe release. *Id.* ORR
3 must further update both potential sponsor and child, explain why the process is
4 incomplete, and work with potential sponsors, relevant stakeholders, and ORR to
5 address unresolved portions of the FRP.

6 **b. Alternative Caregiver or Plan For Release**

7 ORR policy requires concurrent release planning alongside the Family
8 Reunification Packet ("FRP"). ORR's *Unaccompanied Child Manual of*
9 *Procedures*, Section 2: *Safe and Timely Release from ORR Care* ("UC MAP § 2"),
10 directs ORR personnel to identify and vet an alternate adult caregiver alongside the
11 primary sponsor to ensure that a contingency caregiving plan exists if the sponsor
12 becomes unable to care for the child. *See* UC MAP § 2, at 29–30, 55–57. Sponsors
13 must also provide information verifying the identity of adult household members
14 and any adult caregivers identified in the sponsor care plan. *Id.* at 29.

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

22 **III. ARGUMENT**

23 **a. Petitioner's Continued Detention Is Subject To Judicial Review**

24 Respondents contend that habeas relief is untimely because the sponsorship
25 process remains ongoing and sponsorship applications remain incomplete. *See*
26 Answer at 15:5-16:19. But Petitioner does not challenge sponsor adjudications; he
27 challenges his continued detention while reunification remains unresolved and with
28 no end in sight. I.R.L.M. has been in ORR custody for approximately seven
months and the government contends that many more, often time-consuming,

1 vetting steps remain before reunification with his mother could occur. Answer at
 2 14:17-15:1; Declaration of Elizabeth Kronk ("Kronk Decl."), Dkt. 14-1, at ¶ 57;
 3 *see also, e.g., infra* at 5, FN 3.

4 Meanwhile, while ORR tries to blame Petitioner's sponsor for her failure to
 5 complete sponsorship requirements (*e.g.*, Answer at 13:6-8), the record shows that
 6 ORR has delayed resolution of the sponsorship process. The Petition recounts
 7 ORR delays beginning when Petitioner entered ORR custody. Pet. at ¶¶ 4, 6, 23-
 8 26, 28.29, 31, 33, 36, 37, 38. And, Respondents' Answer shows additional delays
 9 in its account of actions recently initiated or yet to be carried out. These include,
 10 but are not limited to:

11 (1) completion of:

12 (a) the home study, which ORR did not initiate until July 28, 2026,
 13 and remains unfinished despite Respondents' representation to this
 14 Court that it would be by August 12, 2026 (Answer at 14:19),

15 (b) additional checks (*id.* at 14:26-27), which could have been
 16 initiated, as some were, as early as March 2026 (*see id.* at 11:19-21),

17 (c) DNA testing (a new process requirement known to take a long
 18 time that Respondents have not even attempted to schedule)³, and

19 (d) a Division of Vetting report (which only ORR can complete);

20 (2) insistence on completion of ministerial tasks before reunification could
 21 occur, including obtaining a signature from F.M.D. on her sponsorship application
 22 (*id.* at 14:18); and

23 ³In 2025, DNA verification became a new part of the ORR process and has served to
 24 prolong the already lengthy process. While ORR always had the ability to request DNA
 25 when there was any doubt regarding a family relationship, it previously did not require
 26 DNA across the board, even in cases where, as here, there was absolutely no question
 27 regarding the veracity of the family relationship. Declaration of Marion Donovan-Kaloust
 28 ("Donovan-Kaloust Decl.") at ¶¶ 9, 10, 11-14. 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 to
 complete. 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.
Id. at ¶¶ 9-11.

1 (3) requiring that F.M.D. provide a “Proof of Social Security Number [sic] or
2 Tax Identification Number for the Sponsor [sic] for HHM2” (*id.* at 14:22-25),”
3 when she has already provided the social security number for this individual.
4 Answer at 14:7-9. Delaying the sponsorship application further while ORR awaits
5 a copy of a social security card for “HHM2” for verification purposes needlessly
6 protracts an already lengthy process. As F.M.D. has already provided “HHM2’s”
7 social security number, the federal government, which administers the social
8 security program, can presumably complete any required verification. There is,
9 therefore, no need for a copy of the physical card to carry out this requirement.⁴

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

18 **b. ORR’s Vetting of Sponsors Does Not Authorize Prolonged**
19 **Detention**

20 Respondents contend that because sponsor vetting remains ongoing, their
21 custody of Petitioner is “required by statute.” Answer at 16:21-17:24. Petitioner does
22 not dispute that ORR possesses statutory authority to evaluate sponsor suitability.
23 *See* 8 U.S.C. § 1232(c)(3)(A); 45 C.F.R. § 410.1202. Instead, Petitioner questions
24 whether ORR may continue to detain this child for seven months (or longer) while
25 outstanding tasks, including, but not limited to, collecting signatures, completing a
26 home study, DNA, and documents already in the government’s possession, *see supra*
27 at 5-6, remain unresolved. Respondents identify no statute, regulation, or case

28 ⁴ Obtaining social security information is another new requirement, which creates new
barriers to reunification for sponsors. Donovan-Kaloust Decl. at ¶ 7.

1 authorizing detention of that duration based solely on an unfinished reunification
2 process. Nor do Respondents identify any determination that I.R.L.M. poses a
3 danger to the community or presents a flight risk, *see generally* Answer at 10-15⁵,
4 or that F.M.D. presents any risk of abuse, maltreatment, exploitation, or trafficking
5 to Petitioner. Pet. at ¶ 39. Additionally, Respondents report that two of F.M.D.'s
6 household members' internet-based background checks "came back as clear,"
7 indicating that they likewise pose no risk to Petitioner. Answer at 14:2-3.

8 Respondents' own chronology illustrates the problem. As set forth above,
9 I.R.L.M. entered ORR custody on January 15, 2026. ORR identified a Category 2
10 and Category 1 sponsor in January and February respectively. *Id.* at 10:14-11:9,
11 11:14. ORR's vetting requirements led to delays that began in February 2026 and
12 continue to date with no predictable end. *Supra* at 5-6; *see also* Answer at 14:17-
13 15:1 (outstanding tasks). As a result, I.R.L.M. remains detained without a decision
14 on his reunification.

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

19 Congress directed that unaccompanied children be "promptly placed in the
20 least restrictive setting that is in the best interest of the child." 8 U.S.C. §
21 1232(c)(2)(A). ORR's regulations similarly require prompt and continuous efforts
22 toward release, release without unnecessary delay, and periodic supervisory review
23 of reunification applications that remain pending. *See* 45 C.F.R. §§ 410.1200,
24 410.1201, 410.1203(a), 410.1207(a). ORR is specifically required to "make and
25 record prompt and continuous efforts toward the release of children in its custody."

26 ⁵ Even under Respondents' reliance on OBBBA § 87001, the record reflects extensive
27 sponsor-review efforts. Respondents acknowledge that ORR has undertaken identity
28 verification, household member verification, sponsor and household member
fingerprinting, residential history, home study, and criminal-background screening during
the reunification process. *See* Answer at 14:10-15; Kronk Decl. at ¶¶ 37-57.

1 45 C.F.R. § 410.1203(a). These provisions reflect a central premise of the statutory
2 scheme: ORR custody is temporary. Sponsor review exists to facilitate safe
3 reunification, not to transform temporary child-welfare custody into confinement
4 measured in many months.⁶

5 Respondents' contention that they are "acting in accordance with the
6 TVPRA's requirements," Answer at 17:22, is without grounds as they have ignored
7 other regulations that exist for the sole purpose of moving along the reunification
8 process. These regulations contemplate formal supervisory review every ninety
9 days, identification of barriers to release, and affirmative efforts to resolve those
10 barriers. *See* 45 C.F.R. § 410.1207(a). I.R.L.M. has remained in ORR custody
11 through multiple ninety-day review cycles while reunification remained unresolved.
12 Respondents identify no final release determination. *See generally* Kronk Decl.; *see*
13 *id.* at ¶ 22 (recounting the 90-day review requirement). The record provides little
14 indication that the review process contemplated by § 410.1207(a) resulted in timely
15 resolution of the barriers that Respondents identify as preventing reunification.
16 Additionally, ORR's own policies provide for concurrent planning and the
17 identification of alternative caregivers when sponsorship assessments cannot be
18 completed in a timely manner. *See* UC MAP § 2, at 7, 9, 45. Yet Respondents
19 identify no concurrent-planning efforts for I.R.L.M. notwithstanding the prolonged
20 delays in their cases. Indeed, ORR's decision to close out Petitioner's maternal
21 aunt's sponsorship makes plain that no concurrent planning efforts have been made.
22 Answer at 11:12-13.

23 If ORR may continue detaining children and delaying their release by simply
24 identifying more unresolved administrative steps, the statutory requirement of
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26 ⁶ Since the beginning of 2025, ORR has imposed numerous additional sponsor-vetting
27 requirements. *See* Answer at 7:19-8:24; *see also* Donovan-Kaloust Decl. at ¶¶ 7-9. Those
28 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.

1 prompt placement would have no practical meaning.⁷ The consequences of these
2 delays are not abstract. ORR's own records reflect that Petitioner experienced
3 anxiety, distress, worsening mental-health symptoms, physical health ailments, and
4 prolonged separation from family while reunification remained unresolved. *See* Pet.
5 ¶¶ 7, 27, 30, 40, 41. Congress's command of prompt placement reflects the
6 recognition that prolonged institutional custody itself carries significant costs for
7 children awaiting reunification with family members.⁸ At some point, detention
8 ceases to resemble the temporary child-welfare custody authorized by Congress and
9 instead becomes the consequence of an administrative process that has failed to
10 reach a timely conclusion.

11 After approximately seven months of confinement, Respondents have failed
12 to establish that Petitioner's continued detention remains reasonably related to the
13 temporary child-welfare purposes underlying ORR custody. The record instead
14 reflects that Petitioner is bearing the consequences of delay in a reunification process
15 that Congress expected ORR to promptly complete. The TVPRA and Foundational
16 Rule require ORR to act with diligence, not to rely on its incompleteness as a
17 continuing justification for confinement. Nothing in either authority permits

18 ⁷ As our colleagues from the ACLU of Virginia recently put it in a similar Habeas
19 Petition also involving UCs detained for more than 300 days: "Respondents' delays [in
20 timely adjudicating a FRP] created a self-fulfilling trap. As months passed, previously
21 completed background checks expired and had to be repeated, generating new rounds of
22 delay. This is despite the absence of any identified trafficking concern, criminal concern,
23 or danger to the children. These delays in reunification are part of an escalating pattern by
24 Respondents to prevent children from being released." *See*
25 [https://www.acluva.org/cases/jane-p-et-al-v-salazar-et-al/?document=ECF-1-Petition-for-](https://www.acluva.org/cases/jane-p-et-al-v-salazar-et-al/?document=ECF-1-Petition-for-Writ-of-Habeas-Corpus-and-Complaint)
26 [Writ-of-Habeas-Corpus-and-Complaint](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.

27 ⁸ Those costs are well documented. HHS's Office of Inspector General reported that ORR
28 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).

1 prolonged detention simply because ORR continues to identify additional steps
2 before making a reunification decision.

3 **c. Petitioner's Detention Violates Due Process**

4 **i. Petitioner's Continued Detention Violates**
5 **Procedural Due Process**

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

13 **ii. Petitioner Is Deprived of Fundamental Liberty**
14 **Interests**

15 Freedom from physical restraint lies at the core of the liberty protected by the
16 Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Children likewise
17 possess a constitutionally protected interest in freedom from institutional
18 confinement. *Reno v. Flores*, 507 U.S. 292, 302-03 (1993). Petitioner has spent
19 approximately seven months in ORR custody while separated from family members
20 seeking reunification. *See* Santamaria Decl. ¶ 11; *see also* Kronk Decl. at ¶ 29. The
21 Constitution also protects family integrity and familial association. *Rosenbaum v.*
22 *Washoe County*, 663 F.3d 1071, 1079 (9th Cir. 2011); *Moore v. City of East*
23 *Cleveland*, 431 U.S. 494, 504-05 (1977). For a child, confinement means more than
24 physical restraint; it means continued separation from his mother and family during
25 a critical period of emotional, social and personal development, and the loss of a
26 portion of childhood that no later reunification can restore. Thus, Petitioner's
continued confinement implicates substantial liberty interests.

27 **iii. The Risk of Erroneous Deprivation Is Substantial**

28 The second *Mathews* factor likewise strongly favors Petitioner. Respondents

1 repeatedly rely on ORR's administrative review process and the procedures
2 approved in *Lucas R.* as evidence that adequate procedural protections exist. *See*
3 Answer at 21:14-23:15. But those procedures largely become meaningful only after
4 ORR reaches and communicates a reunification determination. Petitioner's
5 challenge arises from the absence of such a determination despite months of
6 continued detention.

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

13 Respondents' reliance on *Lucas R.* is misplaced. Respondents invoke *Lucas*
14 *R.* as evidence that ORR's reunification framework satisfies due process. But *Lucas*
15 *R.* assumed the existence of a reunification determination subject to administrative
16 review. *See Lucas R. v. Becerra*, No. CV 18-5741-DMG (PLAx), 2022 WL
17 2177454, at *28 (C.D. Cal. Mar. 11, 2022)⁹ It did not address whether children
18 may remain detained for months while that determination remains unresolved.

19 The risk of erroneous deprivation is not hypothetical. I.R.L.M. remains
20 detained approximately seven months while ORR continues to request verification
21 items, evaluate F.M.D.'s application, and delays further as it waits for a signature
22 and its own internal reports and fails to make further appointments, which could take
23 months to complete. Kronk Decl. at ¶¶ 56, 57; *supra* at 5, FN 3. In light of the delays

24 ⁹ *Lucas R.* did not merely recognize ORR's authority to vet sponsors. It also required
25 periodic supervisory review of pending reunification applications to identify barriers to
26 release and advance safe reunification. *See Lucas R. v. Becerra*, No. CV 18-5741-DMG
27 (PLAx), 2022 WL 2177454, at *28-29 (C.D. Cal. Mar. 11, 2022). Those reviews were
28 intended to prevent children from remaining in ORR custody while reunification efforts
stagnated. *Id.* The Kronk 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* Kronk Decl. Petitioner had
been in ORR custody well beyond 90 days and reunification remains unresolved.

1 documented in the record, the time it takes to complete tasks such as DNA
2 verification, and Respondents' failure to meet expected deadlines, *see supra* at 5-6,
3 Respondents have provided no assurance that Petitioner will be released from ORR
4 custody any time soon. Consequently, Petitioner does not have a meaningful
5 mechanism through which to obtain timely review of the detention he challenges
6 here.

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

13 **d. Respondents' Interests Do Not Justify Prolonged Delay**

14 Respondents unquestionably possess a legitimate interest in protecting
15 children from trafficking, abuse, neglect, and exploitation. 8 U.S.C. § 1232(c)(3)(A);
16 6 U.S.C. § 279(b)(2)(A)(ii). Petitioner does not dispute that interest. But the
17 government has a substantial interest in careful sponsor review, not in delay itself.
18 Respondents repeatedly claim that F.M.D. has caused process delays by failing to
19 provide documentation despite ORR's repeated efforts "to help her complete her
20 sponsor application and vetting requirements." *E.g.*, Answer at 22:12-16. But, as
21 discussed above, the record belies this contention. With respect to just the
22 outstanding items ORR states are required to complete vetting, it is ORR that has
23 failed to schedule the DNA/Verification appointment (a new requirement that, as
24 described *supra* at 5, FN 3, can take months to complete) and the child abuse/neglect
25 background checks (which must be coordinated with another agency). It is ORR that
26 is insisting on documentation in certain formats with respect to the social security
27 information for "HHM2" and employment verification data for F.M.D. Pet. at ¶ 75;
28 *see also supra* at 5 (describing the social security request). And, it is ORR that did
not initiate a discretionary home study until July 28, 2026, five months after F.M.D.

1 informed ORR that she wanted to be I.R.L.M.'s sponsor. Answer at 13:26-27.

2 Respondents suggest, without any case law support, that Petitioner's claims
3 as to this factor also fall short because he has "not made any showing of unreasonable
4 delay." Answer at 22:17-17. But, no such showing is necessary. Even if a showing
5 of unreasonableness were necessary, which it is not, the time Petitioner has spent in
6 custody is unreasonable under prevailing law related to adult detention. *See Davis*,
7 533 U.S. at 701 (longer than six months of detention for adult detainees is
8 presumptively unreasonable). The concern here is even more acute because
9 Petitioner is a child who has been detained for more than six months.

10 The TVPRA reflects Congress's judgment that children's interests are
11 ordinarily served through prompt placement in family-based settings once
12 appropriate vetting has occurred. *See* 8 U.S.C. § 1232(c)(2)(A). Nor would
13 additional safeguards impose a substantial burden. Petitioner does not seek to
14 eliminate sponsor vetting. They seek timely adjudication of reunification requests
15 and meaningful review of prolonged detention. Requiring ORR to follow the
16 procedures and timelines reflected in its own regulations would impose little burden
17 while substantially reducing the risk of erroneous deprivation. *See* 45 C.F.R. §§
18 410.1205, 410.1207. Balancing all three *Mathews* factors, Petitioner's continued
19 detention violates procedural due process.

20 **e. Respondents Violated Petitioner's Substantive Due Process Rights**

21 Substantive due process protects against arbitrary governmental interference
22 with fundamental liberty interests, including family integrity, the parent-child
23 relationship, and freedom from unnecessary physical restraint. *Reno v. Flores*, 507
24 U.S. 292, 302 (1993); *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Ms. L. v. ICE*,
25 310 F. Supp. 3d 1133, 1142 (S.D. Cal. 2018). Respondents argue that ORR's conduct
26 remains constitutional because reunification proceedings continue. They contend—
27 despite the record showing ORR's repeated determination that Petitioner's mother
28 presents no risk of abuse, maltreatment, exploitation, or trafficking (Pet. at ¶ 89)—
that F.M.D. has neither an absolute nor unqualified constitutional liberty interest in

1 raising her son and that ORR has a countervailing interest in protecting I.R.L.M.
2 from the risk of harm upon his release. Answer at 18:18-20. Respondents further
3 contend that ORR has put in place “ample due process procedures in its regulations
4 and policy” related to potential sponsors who are parents to contest ORR’s release
5 decisions. *Id.* at 18:25-27. Finally, they argue that the process in which they have
6 engaged with F.M.D. does not “shock[] the conscience,” as it is not outside
7 traditional norms. *Id.* at 19:14-15. These arguments are without grounds.

8 The existence of ongoing administrative activity does not, by itself, establish
9 that continued detention remains reasonably related to ORR’s stated objectives. The
10 issue is not whether ORR may investigate sponsor suitability. It is whether
11 Petitioner’s continued confinement remains reasonably related to the temporary
12 child-welfare purposes that justify ORR custody in the first instance. The vetting
13 process for F.M.D. began on February 23, 2026, and continues to date. Kronk Decl.
14 ¶ 35. Respondents have not determined that I.R.L.M.’s proposed sponsor is
15 unsuitable even though ORR has completed a sponsor assessment, fingerprint-based
16 background checks that returned as clear, and internet-based background checks that
17 returned as clear. *See* Kronk Decl. ¶¶ 39, 54, 56. Notwithstanding those completed
18 vetting measures, ORR has identified no determination that F.M.D. is unsuitable to
19 sponsor her son.

20 The Constitution permits reasonable investigation into sponsor suitability. It
21 does not permit prolonged separation from available family members while the
22 process used to justify that separation remains indefinitely unresolved. *See Ms. L.*,
23 310 F. Supp. 3d at 1142-46; *E.H.C.F. v. Kennedy*, No. 3:25-cv-2142, 2026 WL
24 145229, at *10 (D. Conn. Jan. 16, 2026). At some point, prolonged detention
25 resulting from an unresolved administrative process ceases to be a means of
26 assessing sponsor suitability and becomes an end in itself. Under these
27 circumstances, Respondents have failed to show that Petitioner’s continued
28 detention remains reasonably related to ORR’s stated objectives. Continued
confinement based on an unresolved reunification process, without a determination

1 that F.M.D. is unsuitable and without any identified endpoint, is arbitrary in relation
2 to the temporary child-welfare purposes underlying ORR custody and therefore
3 violates substantive due process. Contrary to what Respondents contend, the lengthy
4 vetting process that has kept Petitioner in ORR custody and away from his mother
5 for seven months with no end in sight due to additional procedural hurdles does
6 “shock the conscience.”

7 **f. Petitioner’s TVPRA Claim is Properly Before this Court**

8 Respondents argue that because the “TVPRA does not provide a standalone
9 cause of action,” Petitioner must bring his challenge under the APA. *Id.* at 42:23-
10 44:3. Respondents’ APA argument suffers from the same flaw as their
11 administrative exhaustion one, *see supra* § IV.a. Respondents contend that judicial
12 review is unavailable because ORR has not yet issued a final reunification or
13 release decision. *See id.* at 33-35. But again, Petitioner does not seek review of a
14 completed agency adjudication. He challenges ongoing detention while
15 reunification remains unresolved. Under Respondents’ theory, ORR could continue
16 detaining children while simultaneously avoiding judicial review simply by leaving
17 reunification proceedings unfinished. Neither the APA nor habeas principles
18 permit such a result, particularly because the APA does *not* bar habeas review of
19 ongoing unlawful detention.

20 In any event, exhaustion is prudential rather than jurisdictional. *McCarthy v.*
21 *Madigan*, 503 U.S. 140, 144 (1992); *Laing v. Ashcroft*, 370 F.3d 994, 997, 1000
22 (9th Cir. 2004). Prudential exhaustion is not required where administrative
23 remedies are inadequate, futile, or would result in irreparable harm. *Laing*, 370
24 F.3d at 1000. Those circumstances are present here. Petitioner remains detained
25 while ORR’s reunification process continues without resolution, and the
26 procedures identified by Respondents provide no timely mechanism through which
27 to obtain review of this detention.

28 **IV. CONCLUSION**

For the foregoing reasons, this Court should grant the relief sought in

1 Petitioner's Petition or hold an evidentiary hearing. This Court should order
2 Petitioner immediately released from ORR detention to his sponsor or Alternative
3 Caregiver.

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5 Respectfully submitted on August 14, 2026.

6
7 /s/ Cynthia Isabel Felix

8 Cynthia Isabel Felix

9
10 /s/ Emily Gerber Sugarman

11 Emily Gerber Sugarman

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